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Vol. I

192

74945
Sup. Ct.

TRANSCRIPT OF RECORD

(Pages 1 to 110)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 759

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION

No. 760

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA.

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI IN NOS. 759 AND 760 FILED DECEMBER 6, 1946.
PETITION FOR CERTIORARI IN NOS. 781 AND 782 FILED DECEMBER 12, 1946.
PETITION FOR CERTIORARI IN No. 811 FILED DECEMBER 21, 1946.
CERTIORARI GRANTED IN NOS. 759 AND 760 DECEMBER 9, 1946.
CERTIORARI GRANTED IN NOS. 781 AND 782 DECEMBER 16, 1946.
CERTIORARI GRANTED IN NO. 811 DECEMBER 23, 1946.

APPENDIX

TABLE OF CONTENTS

Volume I

PLEADINGS, BRIEFS, AND MEMORANDA

	Page
Complaint	1
Exhibit A. (Executive Order No. 9728)	9
Exhibit B. (Krug-Lewis Agreement)	10
Exhibit C. (National Bituminous Coal Wage Agreement)	15
Exhibit D. (Order of National Wage Stabilization Board)	19
Exhibit E. (Letter from Mr. Lewis to Secretary of the Interior, October 21, 1946)	26
Exhibit F. (Letter from Captain Collisson to Mr. Lewis, October 22, 1946)	27
Exhibit G. (Letter from Mr. Lewis to Secretary of the Interior, October 22, 1946)	29
Exhibit H. (Telegram from Secretary of the Interior to Mr. Lewis, October 27, 1946)	29
Exhibit I. (Telegram from Mr. Lewis to Secretary of the Interior, October 28, 1946)	30
Exhibit J. (Letter from Secretary of the Interior to Mr. Lewis, November 14, 1946)	30
Exhibit K. (Letter from Attorney General to Secretary of the Interior, November 15, 1946)	32
Exhibit L. (Letter from Mr. Lewis to Secretary of the Interior, November 15, 1946)	34
Exhibit M. (Letter from Secretary of the Interior to Mr. Lewis, November 15, 1946)	34
Supporting Affidavits	35
Affidavit of J. A. Krug, Secretary of the Interior	35
Affidavit of James Forrestal, Secretary of the Navy	39
Affidavit of Robert P. Patterson, Secretary of War	40
Affidavit of John D. Small, Administrator, Civilian Production Administration	40
Affidavit of G. H. Helmbold, Managing Director; Ship Operations, United States Maritime Commission	44
Affidavit of Leland Olds, Chairman, Federal Power Commission	46
Affidavit of James A. Crabtree, Acting Surgeon General, Public Health Service	48
Affidavit of J. M. Johnson, Director, Office of Defense Transportation	49
Memorandum on Behalf of the United States in Support of Application for a Temporary Restraining Order and Preliminary Injunctive Relief	51
Temporary Restraining Order dated November 18, 1946	60
Summons and Return of Service of Complaint and Summons	62-63
Affidavit of Service of Complaint, Supporting Affidavits, Memorandum of Law and Temporary Restraining Order	63
Petition for Rule to Show Cause for Contempt of Court	66
Supporting Affidavit of Captain Collisson	67
Temporary Restraining Order	69
Points and Authorities in Support of Petition for Rule to Show Cause	70
Affidavit of Service	71

723856—46—vol. 1——1

	Page
Rule to Show Cause for Contempt of Court	72
Brief of Government Concerning Issues Arising on the Return to the Rule to Show Cause	73
Defendants' Motion to Discharge and Vacate Rule to Show Cause	82
Defendants' Notice of Attachment of Statement of Points and Authorities in Support of Defendants' Motion to Discharge and Vacate Rule to Show Cause	83
Defendants' Points and Authorities in Support of Motion to Discharge and Vacate	84
Acknowledgment of Service of Motion to Discharge and Vacate	85
Order Extending Temporary Restraining Order, dated November 27, 1946	85
Answer of Defendants to Motion for Preliminary Injunction	86
Notice of Attachment of Statement of Points and Authorities in Support of Defendants' Answer to Motion for Preliminary Injunction	88
Points and Authorities in Support of Defendants' Answer to Motion for Preliminary Injunction	88
Order Overruling Motion to Discharge and Vacate Rule to Show Cause	90
Findings of Fact and Conclusions of Law	90
Notice of Renewed Application for Preliminary Injunction	99
Affidavit of Service of Notice of Renewal Application for Preliminary Injunction	100
Judgment and Sentence against Defendant John L. Lewis	101
Judgment and Sentence against Defendant United Mine Workers of America	102
Preliminary Injunction issued December 4, 1946	102
Affidavit of Service of Preliminary Injunction	109
Admission and Acceptance of Service by Defendants of Copies of Preliminary Injunction issued December 4, 1946	110

Volume II

TRANSCRIPT OF PROCEEDINGS

November 25, 1946, Morning Session	
November 27, 1946, Morning Session	111
November 27, 1946, Afternoon Session	146
November 29, 1946, Morning Session	188
November 29, 1946, Afternoon Session	205
December 2, 1946, Morning Session	240
December 2, 1946, Afternoon Session	278
December 3, 1946, Morning Session	307
December 4, 1946, Morning Session	319
December 4, 1946, Afternoon Session	320

Volume III—Exhibits

(a) GOVERNMENT'S EXHIBITS

Exhibit 1. Executive Order 9728 for Taking Possession of Coal Mines	335
Exhibit 2. Department of Interior Order 2200 for Taking Possession of Coal Mines	336
Exhibit 3. Department of Interior Order 2200-A Amending Order Taking Possession of Coal Mines	337
Exhibit 4. Department of Interior Order 2200-B Amending Order Taking Possession of Coal Mines	338

Page

Exhibit 5. Instructions of Secretary of Interior to Telegraph Company, dated May 21, 1946 340

Exhibit 6. Letter of Secretary of Interior to Mining Companies, dated May 21, 1946 340

Exhibit 7. Notice of Taking of Possession of Mines by the Government 342

Exhibit 8. Department of Interior Order 2199 Designating Secretary of Interior as Coal Mines Administrator and Vice Adm. Ben Moreell as Deputy Coal Mines Administrator 342

Exhibit 9. Department of Interior Order 2208 Delegating Powers to Deputy Coal Mines Administrator 343

Exhibit 10. Designation of Captain Collisson as Deputy Coal Mines Administrator 344

Exhibit 11. Department of Interior Order 2258 Designating Captain Collisson to Succeed Vice Adm. Moreell as Coal Mine Administrator 344

Exhibit 12. List of Mines in Government Possession 345

Exhibit 13. So-called Krug-Lewis Agreement dated May 29, 1946 399

Exhibit 14. Application of Secretary of Interior to National Wage Stabilization Board for Approval of Krug-Lewis Agreement, and Approving Order of National Wage Stabilization Board, and Approval of the President, dated May 31, 1946 403

Exhibit 15. Coal Mines Administration Order CMAN-1, dated June 1, 1946, Putting Into Effect the Order of the National Wage Stabilization Board 406

Exhibit 16. Memorandum of Agreement, dated June 12, 1946, Modifying so-called Krug-Lewis Agreement in Respect of Vacation Fund 406

Exhibit 17. Memorandum of Agreement, dated June 27, 1946, Appointing Custodian of Funds Collected for the Welfare and Retirement Fund Created by so-called Krug-Lewis Agreement 407

Exhibit 18. Memorandum of Agreement, dated August 28, 1946, Designating Custodian of Medical and Hospital Fund Created by so-called Krug-Lewis Agreement and providing fines should be paid to that Fund 408

Exhibit 19. Letter from Mr. Lewis to Secretary of Interior dated October 21, 1946 408

Exhibit 20. Letter from Captain Collisson to Mr. Lewis, dated October 22, 1946 410

Exhibit 21. Telegram from Secretary of Interior to Mr. Lewis, dated October 22, 1946 411

Exhibit 22. Letter from Mr. Lewis to Secretary of Interior, dated October 23, 1946 412

Exhibit 23. Telegram from Secretary of Interior to Mr. Lewis, dated October 27, 1946 412

Exhibit 24. Telegram from Mr. Lewis to Secretary of Interior, dated October 28, 1946 412

Exhibit 25. Letter from Mr. Lewis to Secretary of Interior, dated November 15, 1946 418

Exhibit 26. Revised Regulations for Operation of Coal Mines under Government Control, Effective July 8, 1946 413

Exhibit 27. Coal Mines Administration Order CMAN-2, dated June 7, 1946, Establishing Interim Safety Requirements for Mines in Government Possession 431

Exhibit 28. Federal Mine Safety Code, dated July 24, 1946 433

Exhibit 29. Coal Mines Administration Order CMAN-11, A and B, dated August 15, 1946, Providing for Carrying Out of Provisions of So-called Krug-Lewis Agreement in Respect of Workers' Compensation and Occupational Diseases 470

Page

Exhibit 30. Coal Mines Administration Order CMAN-5, dated July 2, 1946, Directing Managing Operators in Respect of Payments to Welfare and Retirement Fund 475

Exhibit 31. Coal Mines Administration Order CMAN-8, dated July 29, 1946, Fixing Procedure for Making and Reporting Payments to United Mine Workers of America Welfare and Retirement Fund 475

NOTE: There are no Government Exhibits in evidence with Numbers 32, 33, 34, or 35.

Exhibit 36. Brief and Appendix of Government in *Jones and Laughlin Steel Corporation* v. *United Mine Workers of America* (Ct. App. D. C.) (The portions of this exhibit which were admitted in evidence are those excerpts which are printed in full as Exhibit 38-A.) .....

Exhibit 37. Brief and Appendix of Appellant Jones and Laughlin Steel Corporation in *Jones and Laughlin Steel Corporation* v. *United Mine Workers of America* (Ct. App. D. C.) (The portions of this exhibit which were admitted in evidence are those excerpts which are printed in full as Exhibit 38-A.) .....

Exhibit 38. Notice by United Mine Workers of America and John L. Lewis filed in *Jones and Laughlin Steel Corporation* v. *United Mine Workers of America* (Ct. App. D. C.) of Reliance on the Brief and Appendix Filed by the United States in that case 477

Exhibit 38a. Letter from Counsel for the United States to Counsel for Defendants, dated December 2, 1946 designating those portions of Government Exhibits 36 and 37 which were offered in evidence, and the portions so designated and admitted in evidence 478

Exhibit 39. Portion of Issue of New York Times dated November 16, 1946 482

Exhibit 40. Excerpts from United Mine Workers Journal for June 1, 1946 and August 15, 1944 483

Exhibit 41. Letter from Mr. Lewis to members of United Mine Workers of America Union, dated November 15, 1946 484

NOTE: There are no Government exhibits in evidence numbered 42, 43, or 44

Exhibit 45. Chart Showing Bituminous Coal Production for 1945 and 1946 486

Exhibit 46. Chart Showing Employment in Bituminous Coal Mines for 1946 486

Exhibit 47. Chart Showing Bituminous Coal Production and Miners Reported Idle Daily for November 1946 487

Exhibit 48. Transcript of Mr. Lewis' Statement Concerning the So-called Krug-Lewis Agreement to Paramount News on May 29, 1946 488

(b) *Defendants' Exhibits*

Exhibit 1. Letter from Captain Collisson to Mr. Lewis, dated October 21, 1946 48

Exhibit 2. Letter from Admiral Moreell to National Wage Stabilization Board, dated June 27, 1946 490

Exhibit 3. Letter from Mr. Compton to National Wage Stabilization Board, dated July 1, 1946 490

Exhibit 4. Letter from National Wage Stabilization Board to Admiral Moreell, dated July 3, 1946 491

Exhibit 5. Letter from Captain Collisson to National Wage Stabilization Board, dated October 22, 1946 491

Exhibit 6. Letter from National Wage Stabilization Board to Captain Collisson, dated October 30, 1946 493

Exhibit 7. Letter from Mr. Lewis to Secretary of the Interior, dated November 15, 1946 493

1 In the District Court of the United States for the District of Columbia

37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

2 *Complaint for Declaratory Judgment and Injunctive Relief*

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

The United States of America, by the Attorney General of the United States, brings this suit against the defendants named above and alleges:

1. This is a suit under the Federal Declaratory Judgment Act (Act of June 14, 1934), Section 274 (d) of the Judicial Code, 28 U. S. C. Section 400, to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree herein, an order for temporary injunctive relief, and such further relief as may be necessary or proper. This court has jurisdiction in this suit by virtue of Section 24 (1) of the Judicial Code, 28 U. S. C. Section 41 (1). A case of actual controversy exists between plaintiff and defendants, which is definite, concrete, real, and substantial, which touches the legal relations of plaintiff and defendants, and vitally affects the public interest. Further, said case of actual controversy admits of an immediate and definitive determination of the legal rights of the parties, and of the public interest, and admits of specific relief through a decree of conclusiveness, as appears at length from the following allegations of the complaint.

2. Defendant United Mine Workers of America (hereinafter sometimes referred to as the "Union") is an unincorporated labor union having as its members practically all the individuals who are employed at and about the bituminous coal mines of the nation. Its members are residents in many of the United States and in this district; they number more than 350,000 individuals. Defendant John L. Lewis is

3 president and the principal officer of the union and as such he has been and now is familiar with and has represented and does now represent the Union in the matters hereinafter described. The defendants now maintain and have long maintained business offices in this district.

3. On or about April 1, 1946, practically the entire body of coal miners represented by the United Mine Workers of America employed in the bituminous coal mines of the nation engaged in a work stoppage resulting in interruptions in the operations of those mines and in a cessation of the flow of bituminous coal from the mines to the railroads and the industrial plants of the nation and to numerous facilities owned and operated by the United States, which require bituminous

coal for their operation. As a consequence, the war effort was unduly impeded and delayed and the continued operation of the national economy during the transition from war to peace was seriously obstructed.

4. On May 21, 1946, the President of the United States issued Executive Order 9728, a copy of which is attached hereto, marked "Exhibit A," and made a part hereof, whereby he authorized and directed the Secretary of the Interior to take possession of any and all bituminous mines the operations of which were so interrupted or threatened with interruption, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

4 5. Pursuant to the provisions of said Executive Order 9728, the United States through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of practically all of the bituminous coal mines of the nation. Since that time, the United States through the Secretary of the Interior has been and now remains in possession of the coal mines which had been subject to the National Bituminous Coal Wage Agreement dated April 11, 1945, hereinafter more fully described.

6. Said Executive Order 9728 was issued by the President of the United States by virtue of the power and authority vested in him by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (Act of September 16, 1940, 54 Stat. 885, 50 U. S. C. App., Secs. 301 et seq.), as amended by the War Labor Disputes Act (Act of June 25, 1943, 57 Stat. 163, 50 U. S. C. App., Secs. 1501 et seq.).

7. Section 3 of said War Labor Disputes Act (50 U. S. C. App., Sec. 1503) empowers the President to take possession of any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith, with respect to which and whenever the President finds and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interests of the war effort.

8. Section 4 of the War Labor Disputes Act (50 U. S. C. App., Sec. 1504) provides that, except as provided in Section 5 of that Act, any plant, mine, or facility whose possession is taken under Section 3 shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

5 9. Section 5 of the War Labor Disputes Act (50 U. S. C. App., Sec. 1505) provides that when possession of any plant, mine, or facility has been taken under authority of Section 3 of that Act, the Government agency operating such plant, mine, or facility, or a majority of the employees thereof, or their representatives may

apply to the National War Labor Board (now its successor agency, the National Wage Stabilization Board) for a change in wages or other terms or conditions of employment in such plant, mine, or facility; that upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages or other terms and conditions which it deems to be fair and reasonable and not in conflict with any act of Congress or any executive order issued thereunder; and that any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

10. In accordance with the express authorization contained in the aforesaid Executive Order 9728, the Secretary of the Interior, on or about May 22, 1946, entered into negotiations with the defendant Union, through its representatives, looking toward the establishment of appropriate changes in the terms and conditions of employment at the bituminous coal mines of which possession had been taken on behalf of the United States.

11. As a consequence of such negotiations, the Secretary of the Interior, acting as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C., with the defendant John L. Lewis, acting as President of the defendant Union (which agreement is hereinafter sometimes referred to as the "Krug-Lewis" agreement), a copy of which is annexed hereto, marked Exhibit B, and made a part hereof. This agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945".

12. Said National Bituminous Coal Wage Agreement, dated April 11, 1945, was an agreement which had been entered into between the Coal Operators and Associations signatory thereto, represented in the National Bituminous Coal Wage Conference, and the defendant Union, covering all of the bituminous coal mines of the United States represented in said Conference, which constituted substantially all of the bituminous coal mines throughout the nation, establishing the terms and conditions of employment at said mines. A copy of this agreement is annexed hereto, marked Exhibit C, and made a part hereof.

13. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and Section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States, on May 31, 1946. A copy of the order of the National Wage Stabilization Board is annexed hereto, marked Exhibit D, and made a part hereof. Despite the provisions of said Section 5, thereafter the defendants made no applica-

tion to the National Wage Stabilization Board for any change in said order or in the wages or other terms and conditions of employ-
7 ment.

14. Thereafter the defendant Union, through its president, the defendant Lewis, with knowledge of the fact that the Krug-Lewis agreement expressly stated that it was to apply during the period of Government possession of the mines, instructed the members of the Union to return to their employment in the mines. Thereafter and since that time the mine workers and the defendants herein have accepted and retained the substantial new benefits which they acquired under the Krug-Lewis agreement.

15. Notwithstanding the foregoing, the defendant Lewis, on October 21, 1946, addressed a letter to the Secretary of the Interior (a copy of which is annexed hereto, marked "Exhibit E" and made a part hereof), in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis agreement, and that under that section, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other, a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this erroneous interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agree-
ment of May 29, 1946, for the purpose of negotiating new ar-
8 rangements affecting wages, hours, rules, practices, differentials, inequalities, and all other pertinent matters affecting or appertaining to the National Bituminous coal industry" and suggested that the conference be convened on November 1, 1946, in Washington, D. C.

16. In reply thereto, on October 22, 1946, N. H. Collison, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, addressed a letter to the defendant Lewis (a copy of which is annexed hereto, marked "Exhibit F," and made a part hereof), in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provisions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration."

17. On the same day, the defendant Lewis addressed a further letter to the Secretary of the Interior (a copy of which is annexed

hereto, marked "Exhibit 6," and made a part hereof), in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement.

9 18. On October 27, 1946, the Secretary of the Interior addressed a telegram to the defendant Lewis (a copy of which is annexed hereto, marked "Exhibit H," and made a part hereof), requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis.

19. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secretary of the Interior (a copy of which is annexed hereto, marked Exhibit I, and made a part hereof), advised the Secretary of the Interior "that representatives, United Mine Workers, will meet with Coal Mines Administrator Collison and his associates at 11:00 a. m. on Friday, Nov. 1. Under these conditions, Krug-Lewis agreement remains effective and unchanged during ensuing period of negotiations."

20. On November 1, 1946, a conference was held in Washington, D. C., attended by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter continued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the defendants' right, by unilateral notice, to terminate the Krug-Lewis agreement. During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a fundamental and far-reaching nature.

10 21. On November 14, 1946, the Secretary of the Interior addressed a letter to the defendant Lewis (a copy of which is annexed hereto, marked "Exhibit J," and made a part hereof), in which he stated in part the following:

"The Coal Mines Administration, as you know, has consistently taken the position that the Krug-Lewis agreement, except as it may be modified by mutual consent or by petition under Section 5 of the War Labor Disputes Act, covers the period of Government possession. I have been informally advised by the Attorney General of the United States that this interpretation of the contract is correct."

22. On November 15, 1946, the Attorney General of the United States confirmed by a formal letter opinion to the Secretary of the Interior (a copy of which is annexed hereto, marked Exhibit K, and made a part hereof) the view above expressed and stated that Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945, had not been carried forward in the Krug-Lewis agreement, and, accordingly was no longer in force.

23. On the same day the defendant Lewis sent a letter to the Secretary of the Interior (a copy of which is annexed hereto, marked "Exhibit L," and made a part hereof), which reads as follows:

"In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America, on October 21, 1946, officially requested a joint conference of the accredited repre-

sentatives for the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

"Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12 o'clock P. M. midnight Wednesday, November 20, 1946."

24. On the same day, November 15, 1946, the Secretary of the Interior addressed a letter to the defendant Lewis (a copy of which is annexed hereto, marked Exhibit M, and made a part hereof), in which the Secretary of the Interior advised the defendant Lewis "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment.'"

11 25. Defendants have persisted, are now persisting, and, on information and belief, will continue to persist in their contention that the Krug-Lewis agreement carries forward the provisions of Section 15 of the National Bituminous Coal Agreement, dated April 11, 1945, and that, accordingly, by virtue of those provisions, they have the right to terminate the Krug-Lewis agreement by unilateral notice. On the other hand, the United States of America has at all times contended and now contends that defendants do not have the right, by unilateral notice, to terminate the Krug-Lewis agreement.

26. The rights, status, and other legal relations of the United States of America and the Secretary of the Interior in connection with the possession, control and operation of the coal mines have been and are affected and brought in question by the action and threatened action of defendants. A genuine and substantial controversy and issue exists and is in dispute between plaintiff and defendants. It is necessary for the preservation of plaintiff's rights and for the protection of the public interest that this Court determine whether defendants have the right to terminate the Krug-Lewis agreement by unilateral notice.

27. The aforesaid action of defendants, in purporting to terminate the Krug-Lewis agreement on November 20, 1946, constitutes a breach of the obligations assumed by defendants under the Krug-Lewis agreement for the period of Government possession.

28. On information and belief: It has been a long established policy of the defendants that the members of the Union should work

12 at the mines only while there is in effect a contract, to which the defendant Union is a party, which establishes the terms and conditions of employment in such mines. In accordance with that policy and the repeated declarations of the defendant Lewis and other officers of the defendant Union, the members of the Union, who constitute the great majority of the mine workers in the bituminous coal fields, have consistently refused to work in such mines in the absence of such an effective contract; and further, in accordance with that long established policy and pursuant to such repeated declarations, the members of the Union, upon the mere announcement by the defendant Lewis that an existing contract has been voided or terminated or that no contract exists, have in concert ceased to work at such mines and have continued to stay out of the mines until the defendant Lewis has announced that a contract again exists.

29. On information and belief: As a consequence of the foregoing, the aforesaid notice given by the defendant Lewis, purporting to

terminate the Krug-Lewis agreement, constitutes in substance and in effect a call for a strike of the bituminous coal mine workers who are members of the defendant Union to commence at midnight on November 20, 1946.

30. The aforesaid notice given by the defendant Lewis purporting to terminate the Krug-Lewis agreement is accordingly unlawful, in that, on information and belief, defendants thereby coerce, instigate, induce, and encourage the mine workers employed in the bituminous coal mines in Government possession to interfere by strike, slowdown, and other interruption with the operation of those mines; and, further, in that defendants thereby interfere with the sovereign functions of the United States of America exercised for the general welfare and in order to insure the operation of the mines in the interests of the war effort and to preserve the national economic structure in the present emergency.

13 31. The threatened concerted work stoppage at the bituminous coal mines in the Government's possession would constitute an irreparable injury to the interests of the people of the United States of America. The continued maximum production of bituminous coal in the mines of the nation is vital to the maintenance and preservation of the national economy. Coal is a commodity of such character that it cannot easily be stored in adequate quantities, and the stocks of bituminous coal available in the nation today are sufficient only to meet the requirements of the economy for a brief period. A stoppage of production at this time would, therefore, constitute an immediate menace to the health, safety and welfare of the people of the United States; would compel a slow-down and eventual stoppage of the nation's industrial machine, and transportation and public utilities system; and would seriously interfere with the successful completion of the war effort of the United States and with the reconversion of the economy from a wartime to a peacetime basis.

32. The various acts and things which defendants have done and have threatened to do, as aforesaid, have interfered with and will, except for the intervention of this Court, interfere with the effective discharge of vital Governmental functions; will frustrate the powers conferred by the Constitution and by acts of Congress upon the Executive to terminate by Government seizure, interruptions consequent upon labor disturbances in vital war industry; and are unlawful and will cause irreparable injury to plaintiff for which it has no adequate remedy at law.

WHEREFORE, plaintiff, the United States of America, prays:

That plaintiff have a judgment and decree of this Court declaring its rights and status, and more particularly adjudicating:

(a) That neither the defendants nor any of them had or has the right, authority, or power to issue or give any notice
14 purporting to terminate the Krug-Lewis agreement;

(b) That neither the defendants nor any of them had or has the right, authority, or power, by unilateral notice, to terminate the Krug-Lewis agreement at any time during the period of Government possession of the bituminous coal mines, or by any other unilateral action to render the provisions of that agreement nugatory or void;

(c) That the issuance of any notice by defendants, or any of them, to the effect that the Krug-Lewis agreement is terminated

or terminable by them, or any of them, or a declaration by defendants or any of them that there is no contract in effect at the bituminous coal mines is unlawful and that any such declaration by the defendants or any of them is void and of no force and effect.

2. That this Court, pending the final determination of this cause, issue a preliminary injunction restraining and enjoining defendants, and each of them, and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, from:

(a) Issuing or otherwise giving publicity to any notice, except with the consent of the Secretary of the Interior or the Coal Mines Administrator, or upon order of the National Wage Stabilization Board, that, or to the effect that, the Krug-Lewis agreement has been, is, or will at some future date be terminated, or that said agreement is or at some future date will be non-existent, nugatory, or void at any time during the period of Government possession;

(b) Permitting to remain outstanding the notice heretofore given by the defendant John L. Lewis to the Secretary of the Interior, dated November 15, 1946;

(c) Breaching their obligations under the Krug-Lewis agreement by permitting to remain outstanding the notice heretofore given by the defendant John L. Lewis to the Secretary of the Interior, dated November 15, 1946, or by issuing any such notice as referred to in paragraph 2 (a) of this prayer;

(d) Coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slowdown, walk-out, cessation of work, or otherwise, with the operation of said mines by permitting to remain outstanding the notice heretofore given by the defendant John L. Lewis to the Secretary of the Interior, dated November 15, 1946, or by issuing any such notice of termination as referred to in paragraph 2 (a) of this prayer, or through any other means or device;

(e) Interfering with or obstructing the exercise by the Secretary of the Interior, on behalf of the United States, of his functions under Executive Order 9728 by permitting to remain outstanding the notice heretofore given by the defendant John L. Lewis to the Secretary of the Interior, dated November 15, 1946, or by issuing any such notice of termination as referred to in paragraph 2 (a) of this prayer, or by any other means or device;

(f) Taking any action which would impair, obstruct, or render fruitless the determination of this controversy by this Court.

3. That, pending the issuance of the aforesaid preliminary injunction, this Court issue forthwith a temporary restraining order restraining and enjoining the defendants and their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them in the manner or form aforesaid.

4. That this Court grant plaintiff such other and further relief as may be just and proper.

TOM C. CLARK,
Attorney General.

By JOHN F. SONNETT,
JOHN F. SONNETT,
Assistant Attorney General.

17 *Verification*

CITY OF WASHINGTON,
District of Columbia, ss:

J. A. KRUG, Secretary of the Interior, United States of America, being first duly sworn, says that he has read the foregoing complaint of the United States of America and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief and as to these matters he believes them to be true.

J. A. KRUG.

Subscribed and sworn to before me this 17th day of November 1946. My commission expires on the 1st day of Dec. 1950.

MARY M. BEPEITI,
Notary Public in and for the District of Columbia.

18 *Exhibit A* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

19 EXECUTIVE ORDER NO. 9728

AUTHORIZING THE SECRETARY OF THE INTERIOR TO TAKE POSSESSION OF AND TO OPERATE CERTAIN COAL MINES

WHEREAS after investigation I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892), as amended by the War Labor Disputes Act (57 Stat. 163), as President of the United States and Commander in Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Interior is authorized and directed to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. The Secretary of the Interior shall operate the said mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions of Section 5 of the War Labor Disputes Act.

3. Subject to the national wage and price stabilization policies as determined by the National Wage Stabilization Board and the Economic Stabilization Director, the Secretary of the Interior is authorized, pursuant to the provisions of Section 5 of the War Labor Disputes Act, following such negotiations as he may deem necessary with the duly constituted representatives of the employees, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

4. In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. All Federal agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purposes of this order.

20 5. The Secretary of the Interior shall make employment available and provide protection to all employees working at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

6. The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

7. The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operations of the mines.

8. Possession of any mine or mines taken under this order shall be terminated by the Secretary of the Interior as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency of any such mine or mines prevailing prior to the taking of possession thereof.

HARRY S. TRUMAN.

THE WHITE HOUSE, *May 21, 1946.*

131894

21 *Exhibit B* 37764

KRUG LEWIS AGREEMENT, 29 MAY 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

22 AGREEMENT

This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Gov-

ernment possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945.

1. *Provisions of National Bituminous Coal Wage Agreement Preserved*

Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941 through March 31, 1943, the supplemental agreement providing for the six (6) day work week, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945.

2. *Mine Safety Program*

(a) *Federal Mine Safety Code.*

As soon as practicable and not later than 30 days from the date of the making of the agreement, the Director of the Bureau of Mines after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, will issue a reasonable code of standards and rules pertaining to safety conditions and practices in the mines. The Coal Mines Administrator will put this code into effect at the mines. Inspectors of the Federal Bureau of Mines shall make periodic investigations of the mines and report to the Coal Mines Administrator any violations of the Federal Safety Code. In cases of violation the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager so that with all reasonable dispatch said violation will be corrected.

23

From time to time the Director of the Bureau of Mines may, upon request of the Coal Mines Administrator or the United Mine Workers, review and revise the Federal Mine Safety Code.

(b) *Mine Safety Committee.*

At each mine there shall be a Mine Safety Committee selected by the Local Union. The Mine Safety Committee may inspect any mine development or equipment used in producing coal for the purpose of ascertaining whether compliance with the Federal Safety Code exists. The Committee members while engaged in the performance of their duties shall be paid by the Union, but shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation Law of the state where such duties are performed.

If the Committee believes conditions found endanger the life and bodies of the mine workers, it shall report its findings and recommendations to the management. In those special instances where the Committee believes an immediate danger exists and the Committee recommends that the management remove all mine workers from the unsafe area, the operating manager or his managerial subordinate is required to follow the recommendation of the Committee, unless and until the Coal Mines Administrator, taking into account the inherently hazardous character of coal mining, determines that the authority of the Safety Committee is being misused and he cancels or modifies that authority.

The Safety Committee and the operating manager shall maintain such records concerning inspections, findings, recommendations and actions relating to this provision of the agreement as the Coal Mines Administrator may require and shall supply such reports as he may request.

24 3. *Workmen's Compensation and Occupational Disease.*

The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine.

4. *Health and Welfare Program*

There is hereby provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:

(a) *A Welfare and Retirement Fund.*

A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers 5¢ per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the President of the United Mine Workers, and the third chosen by the other two. The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (i) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (ii) other related welfare purposes, as determined by the trustees. Subject to the stated purposes of the fund, the trustees shall have full authority with respect to questions of coverage and eligibility,
25 priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provision of benefits, and all related matters.

The Coal Mines Administrator will instruct the operating managers that the obligation to make payments to the welfare and retirement fund becomes effective with reference to coal produced on and after June 1, 1946; the first actual payment is to be made on August 15, 1946, covering the period from June 1 to July 15; the second payment to be made on September 15, covering the period from July 15 to August 31; and thereafter payments are to be made on the 15th day of each month covering the preceding month.

(b) *A Medical and Hospital Fund.*

There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers. This fund shall be accumulated from the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide, or to arrange for

the availability of, medical, hospital, and related services for the miners and their dependents. The money in this fund shall be used for the indicated purposes at the discretion of the trustees of the fund; and the trustees shall provide for such regional or local variations and adjustments in wage deductions, benefits and other practices, and transfer of funds to local unions, as may be necessary and as are in accordance with agreements made within the framework of the Union's organization.

The Coal Mines Administrator agrees (after the trustees make arrangements satisfactory to the Coal Mines Administrator) to direct each operating manager to turn over to this fund, or to such local unions as the trustees of the fund may direct, all such wage deductions, beginning with a stated date to be agreed upon by the Administrator and the President of the United Mine Workers:
26 Provided, however, that the United Mine Workers shall first obtain the consent of the affected employees to such turn-over. The Coal Mines Administrator will cooperate fully with the United Mine Workers to the end that there may be terminated as rapidly as may be practicable any existing agreements that earmark the expenditure of such wage deductions, except as the continuation of such agreements may be approved by the trustees of the fund.

Present practices with respect to wage deductions and their use for provision of medical, hospital and related services shall continue until such date or dates as may be agreed upon by the Coal Mines Administrator and the President of the United Mine Workers.

(c) *Coordination of the Welfare and Retirement Fund and the Medical and Hospital Fund.*

The Coal Mines Administrator and the United Mine Workers agree to use their good offices to assure that trustees of the two funds described above will cooperate in and coordinate the development of policies and working agreements necessary for the effective operation of each fund toward achieving the result that each fund will, to the maximum degree practicable, operate to complement the other.

5. *Survey of Medical and Sanitary Facilities*

The Coal Mines Administrator undertakes to have made a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary and housing conditions in the coal mining areas. The purpose of this survey will be to determine the character and scope of improvements which should be made to provide the mine workers of the Nation with medical, housing and sanitary facilities conforming to recognized American standards.

6. *Wages*

(a) All mine workers, whether employed by the day, tonnage or footage rate, shall receive $1.85 per day in addition to that provided for in the contract which expired March 31, 1946.
27 (b) Work performed on the sixth consecutive day is optional, but when performed shall be paid for at time and one-half or rate and one-half.

(c) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week.

723856—46—Vol 1——2

7. Vacation Payment

An annual vacation period shall be the rule of the industry. From Saturday, June 29, 1946, to Monday, July 8, 1946, inclusive, shall be a vacation period during which coal production shall cease. Day-men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

All employees with a record of one year's standing (June 1, 1945, to May 31, 1946) shall receive as compensation for the above-mentioned vacation period the sum of One Hundred Dollars ($100), with the following exception: Employees who entered the armed services and those who returned from the armed services to their jobs during the qualifying period shall receive the $100 vacation payment.

All the terms and provisions of district agreements relating to vacation pay for sick and injured employees are carried forward to this agreement and payments are to be made in the sum as provided herein.

Pro rata payments for the months they ~~are on~~ the payroll shall be provided for those mine workers who are given employment during the qualifying period and those who leave their employment.

28 The vacation payment of the 1946 period shall be made on the last pay day occurring in the month of June of that year.

8. Settlement of Disputes

Upon petition filed by the United Mine Workers with the Coal Mines Administrator showing that the procedure for the adjustment of grievances in any coal-producing district is inequitable in relation to the generally prevailing standard of such procedures in the industry, the Coal Mines Administrator will direct the operating managers at mines in the district shown to have an inequitable grievance procedure to put into effect within a reasonable period of time the generally prevailing grievance procedure in the industry.

9. Discharge Cases

The Coal Mines Administrator will carry out the provision in agreements which were in effect on March 31, 1946, between coal mine operators and the United Mine Workers that cases involving the discharge of employees for cause shall be disposed of within 5 days.

10. Fines and Penalties

No fines or penalties shall be imposed unless authorized by the Coal Mines Administrator. In the event that such fines or penalties are imposed by the Coal Mines Administrator, the fund withheld for that reason shall be turned over to the trustees of the fund provided for in Section 4 (b) hereof, to be used for the purpose stated therein.

11. Supervisors

With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board.

29 *12. Safety*

Nothing herein shall operate to nullify existing state statutes, but this agreement is intended to supplement the aforesaid statutes in the interest of increased mine safety.

13. Retroactive Wage Provisions

The wage provisions of this agreement shall be retroactive to May 22, 1946.

14. Effective Date

This agreement is effective as of May 29, 1946, subject to approval of appropriate Government agencies.

Signed at Washington, D. C. on this 29th day of May 1946.

(Sgd.) J. A. KRUG,
Coal Mines Administrator.
(Sgd.) JOHN L. LEWIS,
President, United Mine Workers of America.

132178

30 *Exhibit C* 37764

NATIONAL BITUMINOUS COAL WAGE AGREEMENT

Effective April 1, 1945

Executed in the City of Washington, D. C., April 11, 1945

Filed November 18, 1946. Charles E. Stewart, Clerk.

31 THIS AGREEMENT, made this 11th day of April 1945, between the Coal Operators and Associations signatory hereto, represented in the National Bituminous Coal Wage Conference, parties of the first part, and the United Mine Workers of America, parties of the second part, covering all of the bituminous coal mines of the United States represented in said Conference, amends and supplements all agreements as herein provided. This Agreement carries forward and preserves the terms and conditions contained in all Joint Wage Agreements effective April 1, 1941, to March 31, 1943, the Supplemental Agreement providing for the Six-Day Work Week, and all of the various District Agreements executed between the United Mine Workers of America and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and as amended and supplemented by the Agreement herein set out.

Witnesseth:

1. (a). For all inside employees a work day of nine hours from portal to portal is established, including a staggered fifteen minutes for lunch, and without any intermission or suspension of operations throughout the day. Of these nine hours, seven hours shall be paid for at straight rate, the eighth hour shall be paid for at time and one-half, and the ninth hour shall be paid for at a flat rate of $1.50 ($1.00 at time and a half) for each inside day worker. Tonnage, yardage, dead work, or footage workers shall be paid full earnings predicated upon the basic tonnage, yardage, dead work, and footage rates that existed on March 31, 1943. As payment for travel and overtime beyond seven hours per day, there shall be added to the tonnage worker's earnings one-ninth of his daily earnings. On his

sixth consecutive day of work in any week there shall be added to the tonnage worker's earnings for that day one-ninth of such earnings.

32 (b) For all outside employees (including all strip mine and coke-oven employees) a work day of eight hours and fifteen minutes is established, including a staggered fifteen minutes for lunch, and without any intermission or suspension of operations throughout the day. For these eight hours and fifteen minutes each outside employee shall be paid the same amount per day as he is now receiving and which is based upon seven hours of straight time and one hour and fifteen minutes at time and one-half. In addition thereto each outside employee shall receive $1.07 per day to equalize earnings of the outside employee with earnings of the inside employee.

(c) For outside employees whose normal work day heretofore has been eight hours, a work day of eight hours and thirty-five minutes is established, including a staggered fifteen minutes for lunch, for which they shall receive the same pay they are now receiving plus a flat $1.07 per day to equalize earnings of the outside employees with earnings of the inside employees.

(d) The application of rates covered by subdivisions (a), (b), and (c) of this paragraph for time worked less than seven hours or in excess of nine hours are shown in the Appendix attached hereto and made a part hereof.

Exception: When break-down of equipment, accidents, shortage of transportation from the mine, or other causes beyond the control of the management prevent; provided, however, that lack of marked demand is not to permit the management to operate on less than a nine-hour shift for inside employees and on less than an eight and one-quarter hour shift for outside employees.

Exception: Overtime shall not be pyramided and time and one-half shall not be paid where the regular rotation of shifts requires the working of more than one shift in any consecutive twenty-four hour period.

33 2. For all inside employees, work time shall begin at the portal and end at portal; but in shaft mines, for the purpose of making the operations of lowering and hoisting men orderly and safe, the man-trips shall leave the bottom ten minutes after the start of each nine-hour shift and shall arrive at the shaft bottom five minutes before the end of each nine-hour shift. Employees shall be at the shaft collar in time for all of them to be lowered so as to be in the man-trip at the scheduled departure time. The Operator shall have the right to designate the portal or portals and may move or establish new portals if adequate facilities, conveniences, and safety are furnished the mine workers at such new portals, subject to the right of review on the part of the mine workers under existing grievance machinery.

3. Time and one-half or rate and one-half shall not be paid for Saturday work if the individual mine worker has not worked on Monday, Tuesday, Wednesday, Thursday, or Friday of the week.

4. (a) Employees scheduled for and starting work on the second shift, whether paid by the day or by the ton, shall be paid four cents additional for each hour employed. (Example: For nine hours, portal to portal, the increased pay hereunder shall be thirty-six cents.)

(b) Employees scheduled for and starting work on the third shift, whether paid by the day or by the ton, shall be paid six cents additional

for each hour employed. (Example: For nine hours, portal to portal, the increased pay hereunder shall be fifty-four cents.)

(c) The hoisting of coal shall be permitted on each shift.

5. Classification of mobile loading machine rates in all agreements shall be changed to provide the following: Drillers and Shooters, not less than a day rate of $8.00 and an hourly rate of $1.143, except that where the basic inside day rate is less than $7.00, the rate for Drillers and Shooters on mobile loading machine units shall be increased 14.3%. Loading machine operators' helpers shall be paid not less than the Drillers and Shooters rate in any district.

6. The general day labor classifications inside shall be amended to provide as follows:

The rate for inside electricians or mechanics repairing loading and cutting machines, haulage locomotives and conveyors, shall be not less than $9.00 per day, or $1.286 per hour, except that where the base rate for electricians or mechanics in any district is less than $7.80, the base rate shall be increased 15.4%.

The rate for inside electrician or mechanic apprentices or helpers, including wiremen, bonders, oilers, telephone men, and storage-battery chargers, shall be not less than the basic inside day rate in any district.

The work performed by an electrician or mechanic apprentice or helper included in the inside day wage scale shall in no case carry the rate applicable to regular electricians or mechanics except in the case where there is a vacancy in such positions and the work actually performed is that of the regular electrician or mechanic.

7. Slate pickers shall receive the basic outside rate per day and per hour.

8. For each mine where the practice now prevails, the delivery of cars to the working places in the mines by pushing will be the subject of local negotiations and will not be prohibited where it is impracticable to deliver them to the working place otherwise than by pushing. Any controversy as to the continuation of the practice where it now prevails must be considered as a dispute, and shall be settled promptly in accordance with the customary grievance machinery.

9. All employees at mines which produce coal six days per week shall be given a fair and equal opportunity to work on each of such six days. Laying off individual mine workers during the week for the purpose of denying them six days' work is prohibited. Work performed on the seventh consecutive day is optional, but when performed shall be paid for at double rates.

10. The management shall furnish all necessary mine workers' tools. Safety equipment and devices, including electric cap lamps, and also carbide lamps, shall be furnished by the management without charge. This shall not include, however, personal wearing apparel such as hats, clothing, shoes, and goggles. In lieu of furnishing carbide lamps and carbide, the Operator may, at his option, pay to the mine workers who use carbide lamps at their work six cents per day, and the mine worker shall continue to furnish their own carbide lamps and carbide.

No charge shall be made for blacksmithing.

11. Any grievances or disputes as to the starting time shall be handled in accordance with the established practices for the adjustment of such grievances.

12. The provisions relating to vacations with pay are hereby amended to substitute, at the appropriate places therein, Seventy-five ($75.00) Dollars for Fifty ($50.00) Dollars.

In the interest of the national war effort, it is agreed that the vacation period shall be eliminated for the year 1945 without prejudice or modification in the existing vacation clause of the Agreement. This arrangement shall in nowise affect the payment of Seventy-five ($75.00) Dollars to be paid by all Operators to each individual in conformity with the terms of the Agreement.

The above payment to individual mine workers entitled to vacation shall be made at the option of the employing Operator, except that in all cases full payment of the amount prescribed shall be made not later than the last pay day occurring in the month of June 1945.

The vacation payment of the 1946 period shall be made on the last pay day occurring in the month of June of that year.

36 13. If the United Mine Workers make a wage agreement during the period of this Agreement, covering wages or working conditions with any person, corporation, association, or district, more favorable to the Operators than as contained herein, then this Agreement shall be modified so that the Operators who are parties hereto shall receive all of the benefits of such more favorable agreement.

For the duration of this Agreement no strikes shall be called or maintained hereunder.

14. The Operators agree that they will not lease any operating mines subject to this Agreement as a subterfuge for the purpose of avoiding the provisions of this Agreement.

15. This Agreement, dated this 11th day of April 1945, shall be effective as of April 1, 1945, and shall continue in effect hereafter subject to the conditions and termination as herein provided. At any time prior to April 1, 1946, in the event a significant change occurs in the government wage policy, either party shall have the right to request negotiations on general wage rates.

At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference either party may give to the other a notice in writing of the termination of this Agreement, to be effective five days after the receipt of such notice.

Service of the above notice for a negotiating conference or termination of this Agreement by the Operators shall be only upon the request of a majority of the tonnage represented in this conference as disclosed by the records of the present joint conference. For the purpose of maintaining an organization, the Operators' Negotiating Committee as set up in this joint conference shall continue in existence during the life of the Agreement. Service upon the Operators' Nego-

37 tiating Committee or by it shall constitute proper notice.

At any time after March 1, 1947, one or more of the five Operator Groups, as designated by the records of the present conference, may serve notice in writing for a negotiating conference and thereafter for termination of this Agreement.

16. This Agreement is an integrated instrument, and its respective provisions are interdependent and shall be effective from and after

April 1, 1945, subject to the approval hereof by the appropriate governmental agencies and the granting by the Office of Price Administration of advances in maximum prices to cover the increased costs occasioned hereby.

17. It is agreed that any conference or conferences held under the terms of paragraph 15 shall be convened at Washington, D. C., unless such place of meeting is changed by mutual agreement of the parties.

Signed this 11th day of April 1945 at Washington, D. C.

NATIONAL BITUMINOUS COAL WAGE CONFERENCE,
EZRA VAN HORN, *Chairman.*

John T. Jones, Secretary.

Joseph J. Ardigo, Assistant Secretary.

United Mine Workers of America:
John L. Lewis, President.
John O'Leary, Vice President.
Thomas Kennedy, Secretary-Treasurer.
Negotiating Committee:
John Owens,
Hugh White,
Sam Caddy,
Welly K. Hopkins, General Counsel.

Operators' Negotiating Committee:
Charles O'Neill,
Harvey Cartwright (Alternate),
Eugene McAuliffe (Alternate),
Edward R. Burke,
Hubert E. Howard,
Harry M. Moses,
George F. Campbell,
Kenneth A. Spencer.

(Approved by the War Labor Board on April 23, 1945.)

38 APPENDIX

1. Referring to 1 (a), the inside day worker shall be paid his straight productive rate from portal to portal for seven hours or less time per day. If his time from portal to portal is less than nine hours but more than seven, he shall be paid his straight productive rate for the first seven hours and time and one-half at his productive rate for the hours over seven. When his time from portal to portal is nine hours, he shall receive seven hours at his straight productive rate, one hour at time and one-half, and the ninth hour at a flat $1.50.

2. Referring to 1 (b), to arrive at the straight-time rate per hour for outside men whose hours of work are eight hours and fifteen minutes, it shall be computed as follows: Add to his present wages for eight hours and fifteen minutes $1.07; divide this sum by 8.875. For the sixth consecutive day this divisor shall be 12.375.

3. Referring to 1 (c), to arrive at the straight-time rate per hour for outside men whose hours of work are eight hours and thirty-five minutes, it shall be computed as follows: Add to his present wages for eight hours and thirty-five minutes $1.07; divide this sum by 8.875. For the sixth consecutive day this divisor shall be 12.87.

39 *Exhibit D* 37764

ORDER OF NATIONAL WAGE STABILIZATION BOARD, MAY 31, 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

40 UNITED STATES OF AMERICA

NATIONAL WAGE STABILIZATION BOARD

An Application filed by the Secretary of the Interior, Acting under authority of Executive Order #9728, 11 F. R. 5593, and Section 5 of the War Labor Disputes Act

In the Matter of Mines Producing Bituminous Coal, which were, as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945

ORDER

On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of Executive Order #9728, May 21, 1946, and Section 5 of the War Labor Disputes Act, filed an application for a change in wages and other terms and conditions of employment in mines producing bituminous coal which were, as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945, and which were then in the possession of the Secretary of the Interior.

Pursuant to the Stabilization Act of 1942, as amended, Executive Order #9250, of October 3, 1942; Executive Order #9672, of December 31, 1945; and Executive Order #9697, of February 14, 1946, and Section 5 of the War Labor Disputes Act, the National Wage Stabilization Board, having made such investigations as it deemed necessary and desirable in the premises, hereby orders the following changes in wages and other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or Executive Order issued thereunder:

1. That a Mine Safety Program be established in accordance with the provisions of Section 2 of the Agreement entered into on May 29, 1946, between the Secretary of the Interior, acting as Coal Administrator under the authority of Executive Order #9728
41 (dated May 21, 1946, 11 F. R. 5593), and the United Mine Workers of America (herein called "the Agreement"), and which is attached and made a part hereof;

2. That the employees be provided with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws in accordance with the provisions of Section 3 of the Agreement;

3. That a Health and Welfare Program be established in accordance with the provisions of Section 4 (a) of the Agreement;

4. That the wages of all mine workers be increased in accordance with the provisions of Section 6 (a) of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order, that said Section 6 (a) of that Agreement contemplates and will be administered to provide, where less than a full day is worked, for payment for the hours worked at the applicable rate for those hours, it being further understood that, except as inconsistent with the Agreement, existing wage practices will remain in effect.

5. That there shall be put into effect the provisions of Section 6 (b) of the Agreement covering payment for work performed on the sixth consecutive day;

6. That there shall be put into effect the provisions covering recognition of holidays as set out in Section 6 (c) of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order, that "holidays" as used in said Section 6 (c) refers to those holidays heretofore recognized in various District Agreements executed between the United Mine Workers of America and the various coal associations and coal companies, and that this section will be applied, with respect to the employees of the various coal mines, depending upon which holidays were recognized in the applicable District Agreement;

42 7. That vacation payments be made to all employees in accordance with the provisions of Section 7 of the Agreement. It is the understanding of the Board, and such understanding is a condition of this Order;

(a) That the provision in the second sentence of said Section 7 is in recognition of the previous contract practice in this industry and leaves it optional with the parties whether the mines are to operate during the vacation period;

(b) That the provision in the fifth paragraph of Section 7 of said Agreement will be the basis for interpretive rules governing the making of pro rata vacation payments in specific situations, and that these rules will be submitted to the National Wage Stabilization Board for such further consideration and action as may be appropriate under Section 5 of the War Labor Disputes Act.

8. That the Secretary of the Interior, acting as the Coal Mines Administrator, shall have the authority provided for by Section 8 of the Agreement to put into effect generally prevailing grievance procedure where such procedure has not theretofore been in effect;

9. That fines and penalties shall be imposed in a manner provided for by Section 10 of the Agreement and the funds shall be dealt with as provided for by that Section;

10. That this Order shall, upon approval of the President, be made effective as of May 29, 1946, provided that the changes in wages provided for in paragraphs 4, 5 and 6 of this Order shall be retroactive to May 22, 1946.

Dated: Washington, D. C., May 31, 1946.

NATIONAL WAGE STABILIZATION BOARD,
/s/ W. WILLARD WIRTZ, *Chairman.*

"Approved May 31, '46.
HARRY S. TRUMAN."

The Industry Members record their dissent as to paragraphs 1, 2, 3, 5, 6, 7, 8, 9 and 10.

43 AGREEMENT

This agreement between the Secretary of the Interior, acting as Coal Mines Administrator under the authority of Executive Order No. 9728 (dated May 21, 1946, 11 F. R. 5593) and the United Mine Workers of

America, covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945.

1. *Provisions of National Bituminous Coal Wage Agreement Preserved*

Except as amended and supplemented herein, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941 through March 31, 1943, the supplemental agreement providing for the six (6) day workweek, and all the various district agreements executed between the United Mine Workers and the various Coal Associations and Coal Companies (based upon the aforesaid basic agreement) as they existed on March 31, 1943, and the National Bituminous Coal Wage Agreement, dated April 11, 1945.

2. *Mine Safety Program*

(a) *Federal Mine Safety Code*

As soon as practicable and not later than 30 days from the date of the making of the agreement, the Director of the Bureau of Mines after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, will issue a reasonable code of standards and rules pertaining to safety conditions and practices in the mines. The Coal Mines Administrator will put this code into effect at the mines. Inspectors of the Federal Bureau of Mines shall make periodic investigations of the mines and report to the Coal Mines Administrator any violations of the Federal Safety Code. In cases of violation of the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager so that with all reasonable dispatch said violation will be corrected.

From time to time the Director of the Bureau of Mines may,
44 upon request of the Coal Mines Administrator or the United Mine Workers, review and revise the Federal Mine Safety Code.

(b) *Mine Safety Committee*

At each mine there shall be a Mine Safety Committee selected by the Local Union. The Mine Safety Committee may inspect any mine development or equipment used in producing coal for the purpose of ascertaining whether compliance with the Federal Safety Code exists. The Committee members while engaged in the performance of their duties shall be paid by the Union, but shall be deemed to be acting within the scope of their employment in the mine within the meaning of the Workmen's Compensation Law of the state where such duties are performed.

If the Committee believes conditions found endanger the life and bodies of the mine workers, it shall report its findings and recommendations to the management. In those special instances where the Committee believes an immediate danger exists and the Committee recommends that the management remove all mine workers from the unsafe area, the operating manager or his managerial subordinate is required to follow the recommendation of the Committee, unless and until the Coal Mines Administrator, taking into account the inherently hazardous character of coal mining, determines that the au-

thority of the Safety Committee is being misused and he cancels or modifies that authority.

The Safety Committee and the operating manager shall maintain such records concerning inspections, findings, recommendations and actions relating to this provision of the agreement as the Coal Mines Administrator may require and shall supply such reports as he may request.

3. *Workmen's Compensation and Occupational Disease*

The Coal Mines Administrator undertakes to direct each operating manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease Laws, whether compulsory or elective, existing in the states in which the respective employees are employed. Refusal of any operating manager to carry out this direction shall be deemed a violation of his duties as operating manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the operating manager or shutting down the mine.

4. *Health and Welfare Program*

There is hereby provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:

(a) *A Welfare and Retirement Fund.*

A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers 5¢ per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the President of the United Mine Workers, and the third chosen by the other two. The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (i) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (ii) other related welfare purposes, as determined by the trustees. Subject to the stated purposes of the fund, the trustees shall have full authority with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provision of benefits, and all related matters.

The Coal Mines Administrator will instruct the operating managers that the obligation to make payments to the welfare and retirement fund becomes effective with reference to coal produced on and after June 1, 1946; the first actual payment is to be made on August 15, 1946, covering the period from June 1 to July 15; the second payment to be made on September 15, covering the period from July 15 to August 31; and thereafter payments are to be made on the 15th day of each month covering the preceding month.

(b) *A Medical and Hospital Fund.*

There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers. This fund shall be accumulated from the wage deductions presently being made and such as may hereafter

be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide, or to arrange for the availability of, medical, hospital, and related services for the miners and their dependents. The money in this fund shall be used for the indicated purposes at the discretion of the trustees of the fund; and the trustees shall provide for such regional or local variations and adjustments in wage deductions, benefits, and other practices, and transfer of funds to local unions, as may be necessary and as are in accordance with agreements made within the framework of the Union's organization.

The Coal Mines Administrator agrees (after the trustees make arrangements satisfactory to the Coal Mines Administrator) to direct each operating manager to turn over to this fund, or to such local unions as the trustees of the fund may direct, all such wage deductions, beginning with a stated date to be agreed upon by the Administrator and the President of the United Mine Workers: Provided, however, that the United Mine Workers shall first obtain the consent of the affected employees to such turn-over. The Coal Mines Administrator will cooperate fully with the United Mine Workers to the end that there may be terminated as rapidly as may be practicable any existing agreements that earmark the expenditure of such wage deductions, except as the continuation of such agreements may be approved by the trustees of the fund.

Present practices with respect to wage deductions and their use for provision of medical, hospital, and related services shall continue until such date or dates as may be agreed upon by the Coal Mines Administrator and the President of the United Mine Workers.

(c) *Coordination of the Welfare and Retirement Fund and the Medical and Hospital Fund.*

The Coal Mines Administrator and the United Mine Workers agree to use their good offices to assure that trustees of the two funds described above will cooperate in and coordinate the development of policies and working agreements necessary for the effective operation of each fund toward achieving the result that each fund will, to the maximum degree practicable, operate to complement the other.

47 5. *Survey of Medical and Sanitary Facilities*

The Coal Mines Administrator undertakes to have made a comprehensive survey and study of the hospital and medical facilities, medical treatment, sanitary, and housing conditions in the coal mining areas. The purpose of this survey will be to determine the character and scope of improvements which should be made to provide the mine workers of the Nation with medical, housing, and sanitary facilities conforming to recognized American standards.

6. *Wages*

(a) All mine workers, whether employed by the day, tonnage, or footage rate, shall receive $1.85 per day in addition to that provided for in the contract which expired March 31, 1946.

(b) Work performed on the sixth consecutive day is optional, but when performed shall be paid for at time and one-half or rate and one-half.

(c) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week.

7. *Vacation Payment*

An annual vacation period shall be the rule of the industry. From Saturday, June 29, 1946, to Monday, July 8, 1946, inclusive, shall be a vacation period during which coal production shall cease. Day men required to work during this period at coke plants and other necessarily continuous operations or on emergency or repair work shall have vacations of the same duration at other agreed periods.

All employees with a record of one year's standing (June 1, 1945, to May 31, 1946) shall receive as compensation for the above-mentioned vacation period the sum of One Hundred Dollars ($100), with the following exception: Employees who entered the armed services and those who returned from the armed services to their jobs during the qualifying period shall receive the $100 vacation payment.

All the terms and provisions of district agreements relating to vacation pay for sick and injured employees are carried forward to this agreement and payments are to be made in the sum as provided herein.

48 Pro rata payments for the months they are on the pay roll shall be provided for those mine workers who are given employment during the qualifying period and those who leave their employment.

The vacation payment of the 1946 period shall be made on the last pay day occurring in the month of June of that year.

8. *Settlement of Disputes*

Upon petition filed by the United Mine Workers with the Coal Mines Administrator showing that the procedure for the adjustment of grievances in any coal-producing district is inequitable in relation to the generally prevailing standard of such procedures in the industry, the Coal Mines Administrator will direct the operating managers at mines in the district shown to have an inequitable grievance procedure to put into effect within a reasonable period of time the generally prevailing grievance procedure in the industry.

9. *Discharge Cases*

The Coal Mines Administrator will carry out the provision in agreements which were in effect on March 31, 1946, between coal mine operators and the United Mine Workers that cases involving the discharge of employees for cause shall be disposed of within 5 days.

10. *Fines and Penalties*

No fines or penalties shall be imposed unless authorized by the Coal Mines Administrator. In the event that such fines or penalties are imposed by the Coal Mines Administrator, the funds withheld for that reason shall be turned over to the trustees of the fund provided for in Section 4 (b) hereof, to be used for the purpose stated therein.

11. *Supervisors*

With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board.

12. *Safety*

Nothing herein shall operate to nullify existing state statutes, but this agreement is intended to supplement the aforesaid statutes in the interest of increased mine safety.

13. *Retroactive Wage Provisions*

The wage provisions of this agreement shall be retroactive to May 22, 1946.

14. *Effective Date*

This agreement is effective as of May 29, 1946, subject to approval of appropriate Government agencies.

Signed at Washington, D. C., on this 29th day of May 1946.

Coal Mines Administrator.

President, United Mine Workers of America.

Exhibit E 37764

LETTER FROM MR. JOHN L. LEWIS TO SECRETARY KRUG, 21 OCTOBER 1946

Filed, Nov. 18, 1946. Charles E. Stewart, Clerk.

[COPY]

UNITED MINE WORKERS OF AMERICA

John L. Lewis, President Telephone Metropolitan 0530

UNITED MINE WORKERS' BUILDING,
Washington 5, D. C., October 21, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Washington, D. C.

DEAR MR. SECRETARY: On Saturday, October 19, 1946, you in conference with me again refused to correct the unilateral misinterpretations you have heretofore issued of the Krug-Lewis Agreement of May 29, 1946. Your interpretative Bulletin No. 5 of June 25, 1946, concerning pro rata vacation payments and your CMAN-8 setting up railroad weights rather than tipple weights upon which to compute the payments due the Welfare and Refirement Fund remain outstanding and uncorrected. They and other similar unilateral misinterpretations constitute a breach of the said Krug-Lewis Agreement. That agreement is an integrated instrument and its respective provisions are interdependent. A breach of any of its provisions breaches the whole.

For ninety days our representatives have protested these breaches of contract which have led to the loss of millions of dollars due to the Mine Workers. Your adamant refusal to correct these errors continues unabated.

The question of pro rata vacation payments has upon the request of the Illinois Coal Operators Association been referred to arbitration and an award was made therein on August 6, 1946. We have called

upon you for its enforcement. You have refused. In addition to these breaches of the contract, significant changes in the Government wage policy have occurred.

Under the contract reopening provisions of the National Bituminous Coal Wage Agreement dated April 11, 1945 (being Section 15 thereof), specifically carried forward into the Krug-Lewis Agreement, either party may give ten days' notice in writing of a date for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference, either party may give to the other a notice in writing of the termination of the agreement, to be effective five days after the receipt of such notice.

52 The Krug-Lewis Agreement, having thus been breached by you and significant changes in Government wage policy having occurred, you are accordingly hereby officially notified that the United Mine Workers of America requests a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis Agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the national bituminous coal industry. It is suggested that a convening of the conference at ten o'clock A. M., Friday, November 1, 1946, in Washington, D. C., would be appropriate.

Your prompt acknowledgment of the receipt of this notice and your acquiescence to such conference is respectfully requested.

Yours truly,

(Sgd.) JOHN L. LEWIS,
President, United Mine Workers of America.

53 **EXHIBIT F** 37764

LETTER FROM N. H. COLLISSON, CAPTAIN, USNR, COAL MINES ADMINISTRATOR, TO JOHN L. LEWIS, 22 OCTOBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

[Copy]

54 UNITED STATES
DEPARTMENT OF THE INTERIOR
COAL MINES ADMINISTRATION

WASHINGTON 25, D. C., *October 22, 1946.*

MR. JOHN L. LEWIS,
President, United Mine Workers of America,
United Mine Workers Building, Washington 5, D. C.

DEAR MR. LEWIS: The Secretary of the Interior has requested me to reply to your letter of October 21 addressed to him.

I desire to reaffirm the position taken in my letter of yesterday prepared prior to the receipt by me of your letter to the Secretary, to the effect that the Coal Mines Administration has not taken any action which would constitute a breach of the Krug-Lewis Agreement.

Those provisions of the District Agreements, carried forward by the

Krug-Lewis Agreement, adequately provide for the settlement of disputes concerning the proper interpretation of the contract by the ultimate submission of these disputes to arbitration. The position of the Coal Mines Administration has always been that the grievance procedure, culminating in arbitration, is the proper medium for the settlement of disputes concerning the meaning of the contract.

That your organization understood this position is evidenced by the fact that it initiated the proceedings resulting in the arbitrator's decision in Illinois concerning pro rata vacation payments to which you refer in your letter. At no time has this Administration refused the enforcement of arbitrators' decisions. Any delay with respect to the over-all effects of the arbitrator's decision in Illinois was caused largely by your illness. Moreover, we wish to correct your statement that this decision was rendered on August 6, 1946. It was actually rendered on August 31, 1946, and this office advised thereof by you by letter dated September 9, 1946.

With respect to your statement that significant changes in Government wage policy have occurred, such changes, if any, provide no contractual basis requiring negotiations for a revision of the Krug-Lewis Agreement.

Your reference to Section 15 of the National Bituminous Coal Wage Agreement of April 11, 1945, as a basis for requiring contract negotiations looking toward a revision of the existing agreement is
55 clearly unwarranted, for a number of reasons. No attempt is made to detail all these reasons but, among them, is the obvious fact that the Krug-Lewis Agreement itself superseded Section 15 of the National Bituminous Coal Wage Agreement. The Krug-Lewis Agreement states that it "*covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession.*" This statement of the Agreement's life is unqualified. The Krug-Lewis Agreement carries forward only those terms and provisions of past contracts which were not amended or supplemented by the Krug-Lewis Agreement. To now contend that the life of the Krug-Lewis Agreement was subject to the provisions of Section 15 of the 1945 Agreement is tantamount to contending that the Krug-Lewis Agreement could have been reopened the day after it was signed. Obviously, the unqualified statement of the May 29, 1946, document amends and eliminates the 1945 provisions which you cite.

I am, therefore, unable to treat your letter of October 21, 1946, as a notice given pursuant to any existing contract provisions requiring a joint conference for the purpose of negotiating new arrangements affecting wages and other matters.

This Administration considers that the Krug-Lewis Agreement is in full force and effect and calls upon the United Mine Workers of America, who have always prided themselves on fulfilling their contract obligations, to abide by the terms of that agreement.

This Administration is ready, as it has been in the past, to meet with you to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis Agreement, and for that purpose, with the above reservation, any date for such discussions is agreeable to this administration.

It is suggested that any negotiating conferences looking toward a new agreement for the operation of the bituminous coal mines be had

with the representatives of the owners of such mines. The Coal Mines Administration continues ready to lend its good offices to promoting such negotiating conferences, thereby continuing the negotiations which were temporarily recessed pending the Mine Workers Convention early this month. Such an agreement would accomplish the result which has been publicly expressed as the desire of the Coal Mines Administration, the United Mine Workers, and the operators, namely, the return of the mines to private operation.

Very truly yours,

/S/ N. H. COLLISSON,
Captain, USNR,
Coal Mines Administrator.

56 *Exhibit G* 37764

LETTER FROM MR. JOHN L. LEWIS TO SECRETARY KRUG, 22 OCTOBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

Copy

57 UNITED MINE WORKERS OF AMERICA

John L. Lewis, president Telephone Metropolitan 0530

UNITED MINE WORKERS BUILDING,
Washington 5, D. C., October 22, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Department of the Interior, Washington, D. C.

DEAR MR. SECRETARY: This will reply to your telegram from Amarillo and Collisson's letter from Washington of October 22.

The existing Krug-Lewis Agreement expressly provides that both parties to the agreement are bound to meet within a ten-day period from formal request of either party. Such formal request was filed yesterday by the United Mine Workers of America.

Failure on your part to honor this meeting will constitute another breach of the contract, and will void the Krug-Lewis Agreement.

Yours truly,

/s/ JOHN L. LEWIS, *President.*

L:h.

58 *Exhibit H* 37764

COPY OF TELEGRAM FROM SECRETARY KRUG TO MR. JOHN L. LEWIS, 27 October 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

59 "Replying to your letter of 21 October I am requesting that you and/or your representatives meet with Coal Mines Administrator Collisson and his associates on 1 November or any other date agreeable to you."

60 *Exhibit I* 37764

COPY OF TELEGRAM FROM MR. JOHN L. LEWIS TO SECRETARY KRUG, 28 OCTOBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

61 "I esteem your telegram 27th, received by me today, as compliance with request for official conference contained my letter 21 October. I accordingly advise that representative United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, 1 November. Under these conditions, Krug-Lewis agreement remains effective and unchanged during period of negotiations."

62 *Exhibit J* 37764

TEXT OF LETTER FROM SECRETARY OF THE INTERIOR, J. A. KRUG, TO JOHN L. LEWIS, PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, 14 NOVEMBER 1946.

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

63 NOVEMBER 14, 1946.

MY DEAR MR. LEWIS: In our meeting of November 11 you presented certain proposals for modification of the present contract under which the members of the United Mine Workers are working for the period of Government possession. This was the first time since the conference began on November 1 that any specific proposals for modification of the existing contract have been advanced by the United Mine Workers.

I am obliged to inform you that certain of your proposals are of such a fundamental nature that they should be directed to the owners and private operators of the bituminous coal mines rather than to the Government, which is only the interim custodian of these properties.

The Government took over the bituminous mines last May only after it became clearly evident that this was the only available means of averting an economic disaster to the country. Since that time the Government has made diligent efforts to return the mines to private operation with an assurance of continued production. The United Mine Workers have formally and publicly expressed themselves in favor of an early return of the mines to private operation. The operators have stated that they, too, are anxious to regain control of their properties. I am convinced that any substantial change in wage rates and hours of employment made by the Government at this time would postpone for an indefinite period the return of the mines to their owners, and would thwart the expressed and sincere wishes of all persons concerned for genuine collective bargaining between management and labor in the bituminous coal industry.

The Government is bending every effort to restore the national economy to its normal peacetime operation. To this end, the President has just announced the removal of virtually all wage and price con-

trols. It would contradict this policy, and be inimical to the best interest of the coal miners and of the country, should the Government prolong indefinitely its temporary role as a substitute for one of the parties in the collective bargaining which must be the foundation of a healthy coal industry.

64 I express no views whatever upon the intrinsic merits of any of your proposals, but must advise you that they are of such a nature that the Government should not make them a part of its existing contract with the mine workers.

I have frequently urged that you meet with representatives of the Coal Operators in order to negotiate, through the normal processes of collective bargaining, a new contract for the coal industry. I outlined to you yesterday an arrangement by which these negotiations might proceed under conditions which would be fair to both parties. Under this arrangement I would convene a conference between United Mine Workers and the Bituminous Coal Operators Negotiating Committee on November 16, or the soonest practicable date thereafter. In order that coal production might be maintained during these negotiations, Government operation of the mines under the Krug-Lewis Agreement would be continued for a maximum period of two months. During the first of these months the situation would be held in status quo, without retroactive wage changes and with a prohibition against increasing the price of coal sold from a mine in Government possession except upon the prior approval of the Coal Mines Administrator. To hasten the process of collective bargaining, if no agreement should be reached during this first month, the price limitations would be removed and any changes thereafter agreed upon as to wages and hours would be made retroactive to December 16, 1946. If no agreement should be reached by January 16, 1947, the mines would be returned to private possession on that date and the normal operation of economic forces would then prevail in the coal industry.

The operators have agreed to accept this arrangement. I urge that you, too, accept this arrangement and meet with the representatives of the operators on November 16 or at the earliest convenient date, in a sincere effort to reach an agreement which will restore the mines to private operation.

The Coal Mines Administration, as you know, has consistently taken the position that the Krug-Lewis Agreement, except as it may be modified by mutual consent or by petition under Section 5 of the War Labor Disputes Act, covers the period of Government possession. I have been informally advised by the Attorney General of the United States that this interpretation of the contract is correct. I expect, whatever decision you should reach with respect to negotiating with the operators, that the United Mine Workers will honor our present contract and make every effort to insure that the Nation obtains the coal production which it so desperately needs.

Sincerely,

J. A. KRUG
Secretary of the Interior.

65 *Exhibit K* 37764

LETTER FROM ATTORNEY GENERAL CLARK TO SECRETARY KRUG, 15 NOVEMBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

66 NOVEMBER 15, 1946.

The Honorable The SECRETARY OF THE INTERIOR,

MY DEAR MR. SECRETARY: Under date of October 31, 1946, I sent you an informal letter of advice relative to further negotiations under the agreement which you executed on May 29, 1946, with the representatives of the United Mine Workers of America. My letter concluded by saying:

"This is to advise you that in my opinion there is no legal obstacle to such further negotiations. Nor is there any legal impediment to modification of the existing contract so as to reflect changes in wages and other terms and conditions of employment, provided such modification, if any, is satisfactory both to the Government and to the United Mine Workers of America. This is true whether or not section 15 of the agreement of April 11, 1945, is deemed applicable in the present situation, and accordingly I do not believe it necessary at this time to pass upon any question relative to that section. The negotiations can, of course, proceed without prejudice to the rights of either party."

By letter dated November 4, 1946, you advised me that it is of importance to both parties "to know whether section 15 of the 1945 contract does in fact apply" to the present conferences. You accordingly requested my views on that question, and upon your return to the city I gave them to you informally. Today you have requested a formal confirmation, which I am now pleased to give you.

The agreement which you and the miner's union executed on May 29, 1946, opens with the recital that "this Agreement * * * covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession * * *." It goes on to provide in paragraph 1 that "except as amended and supplemented herein, this Agreement carries forward and preserves the terms and conditions contained in all joint

67 wage agreements effective April 1, 1941, through March 31, 1943 * * * and the National Bituminous Coal Wage Agreement, dated April 11, 1945."

The agreement of April 11, 1945, just referred to, contains the following provision, which forms the second paragraph of section 15:

"At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference either party may give to the other a notice in writing of the termination of this Agreement, to be effective five days after the receipt of such notice."

In my opinion the provision which I have just quoted is no longer in force. The agreement of May 29, 1946, expressly provides that it

"covers for the period of Government possession the terms and conditions of employment." It thereby specifies the period during which it is to remain in force and, accordingly, "amends and supplements" section 15 of the 1945 agreement, which provided an opportunity for renegotiation and termination of the terms and conditions of that contract at any time either party desired after March 1, 1946.

This conclusion is reinforced by an examination of the provisions of the War Labor Disputes Act (57 Stat. 163), under which possession of the mines was taken by the United States. (See Executive Order No. 9728 dated May 21, 1946.) The provisions of that Act contemplate, first, that the operations of plants and mines in Government possession shall continue without interruption, and, second, that there shall be an equitable approach to the problem of fixing terms and conditions of employment in such plants and mines.

The contract here under discussion must be interpreted and applied in the light of those objectives. The War Labor Disputes Act sets forth in detail the method whereby changes in such terms and conditions of employment may be effected. It specifically provides, in Section 5, that after possession has been taken by the Government "the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility, or
68 their representatives, may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility." This provision was designed to enable the National War Labor Board to take action from time to time to meet changing conditions. The successor to the National War Labor Board, for the purpose of making determinations under section 5 of the Act, is now the National Wage Stabilization Board (see Executive Order No. 9672, dated December 31, 1945, 11 F. R. 221). That Board on May 31, 1946, issued an order promulgating the terms and conditions of employment established by the agreement of May 29, 1946.

Nothing in the agreement of May 29 purports to limit or alter in any way the right and privilege of either party to the agreement under section 5 of the Act to seek from time to time any necessary or desirable change in terms and conditions of employment. It may be that the guarantee which Congress has given to section 5 cannot be contracted away. That is a question which I do not have to decide in the present case because I do not believe that you and the union representatives intended to contract it away. The agreement you entered into cannot possibly be so interpreted, under its terms. It must follow, therefore, that even though section 15 of the 1945 agreement is not applicable, the employees of the mines may at any time apply to the National Wage Stabilization Board to request changes in terms and conditions of employment.

If I can be of further assistance to you, please let me know.

With kind personal regards,

Sincerely yours,

(Signed) TOM C. CLARK,
Attorney General.

69 *Exhibit L* 37764

LETTER FROM MR. JOHN L. LEWIS TO SECRETARY KRUG, 15 NOVEMBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

70 9043

[COPY]

UNITED MINE WORKERS OF AMERICA

John L. Lewis, president. Telephone: Metropolitan 0530.

UNITED MINE WORKERS' BUILDING,
Washington 5, D. C., November 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior,
Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., Midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS [s], *President.*

71 *Exhibit M* 37764

LETTER FROM SECRETARY KRUG TO MR. JOHN L. LEWIS, 15 NOVEMBER 1946

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

72 9040

THE SECRETARY OF THE INTERIOR,
Washington, November 15, 1946.

MR. JOHN L. LEWIS,
President, United Mine Workers of America,
15th and I Streets NW., Washington, D. C.

DEAR MR. LEWIS: I have received your two letters of November 15, one of which undertakes formally to give me notice that the Government contract with the United Mine Workers will be terminated by you at midnight on November 20, and the other of which amplifies your reasons for giving this notice. I must advise you that you have no power, under the Krug-Lewis Agreement of May 29 or under the

law, by unilateral declaration to terminate the contract which by its terms "covers for the period of Government possession the terms and conditions of employment." I have since my letter to you of November 14 received from the Attorney General of the United States a formal opinion which rules that you are without power to terminate this contract with the Government.

In view of the important national considerations mentioned by the President in his statement of today, and in view of the official ruling of the Attorney General as to the obligations of the United Mine Workers under their contract, I again urge you to reconsider the position indicated in your letter of today and to enter into conferences with the Bituminous Coal Operators' Negotiating Committee without loss of the coal production which is so critically needed at this time.

Sincerely yours,

J. A. Krug.

J. A. KRUG.

A1 Civil No. ——

In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF,

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

C. A. 37764

Filed November 18, 1946. Charles E. Stewart, Clerk.

Supporting affidavits

J. A. Krug, Secretary of the Interior,
James Forrestal, Secretary of the Navy,
Robert P. Patterson, Secretary of War,
John D. Small, Administrator, Civilian Production Administration,
G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission,
Leland Olds, Chairman, Federal Power Commission,
James A. Crabtree, Acting Surgeon General, Public Health Service, and,
J. M. Johnson, Director, Office of Defense Transportation.

A5 *Supporting Affidavit of J. A. Krug, Secretary of the Interior*

Filed November 18, 1946. Charles E. Stewart, Clerk.

A6 In the United States District Court for the District of Columbia

37764

UNITED STATES OF AMERICA, PLAINTIFF,

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

Filed November 18, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

J. A. KRUG, being duly sworn, deposes and says:

1. I am now and have been since prior to May 1, 1946, the Secretary of the Interior and make this affidavit in that capacity.

2. Pursuant to Executive Order of the President of the United States No. 9728, dated May 21, 1946, possession of certain mines in the United States producing bituminous coal was taken for and in behalf of the United States. As stated in said Executive Order possession of said mines was taken because of interruptions in the operation thereof as a result of existing strikes and other labor disturbances. These strikes and labor disturbances had continued since April 1, 1946, following termination of the National Bituminous Coal Wage Agreement of April 11, 1945, between the United Mine Workers of America (hereinafter called U. M. W. A.), and the owners and private operators of the mines whose production employees are represented by the U. M. W. A.

A7 3. Since such original possession of bituminous mines was so taken the possession of certain mines has been terminated and possession has been taken of certain additional mines pursuant to said Executive Order. As of the date of this affidavit, and pursuant to said Executive Orders, the United States is in possession of and operating, or causing to be operated, in excess of 2,200 mines producing bituminous coal. These constitute those mines producing more than approximately 50 tons per day with rail or river connections which were operated under contract with the U. M. W. A. on March 31, 1946.

4. As authorized by Executive Order 9728 and following extended and arduous negotiations with the representatives of U. M. W. A. as Coal Mines Administrator, I, acting in behalf of the United States, entered into a contract with U. M. W. A. dated May 29, 1946, which contract became effective as of that date subject to the approval of appropriate Government agencies. By its order dated May 31, 1946, and approved by the President of the United States on the same day, the National War Stabilization Board, pursuant to Section 5 of the War Labor Disputes Act (50 U. S. C. 1505), ordered changes in wages and other terms and conditions applicable to the mines in Government possession as covered and provided for in said Agreement dated May 29, 1946.

5. On November 15, 1946, I received a notice from U. M. W. A. dated November 15, 1946, purporting to terminate, as of 12 00 p. m. Wednesday, November 20, 1946, the Agreement of May 29, 1946. A copy of this notice is attached to the Complaint herein.

6. On information and belief, it is the established policy of U. M. W. A., as an organization and as individuals, that where no formal contract or interim arrangement or understanding satA8 isfactory to U. M. W. A. exists, no work is performed. The source of my information and the grounds of my belief are various public statements made by officials of U. M. W. A. and the repeated failure and refusal of the membership of that organization to work when it had been declared by the representatives of U. M. W. A. that no contract or other satisfactory interim arrangement exists. Upon such information and belief, it is, therefore, concluded that work by the members of U. M. W. A. will cease at midnight on Wednesday, November 20, 1946, unless the alleged notice of termination dated November 15, 1946, referred to above is withdrawn and cancelled.

7. Attached hereto is a table showing various statistics and facts regarding the effect on the national economy of continued nonproduction of bituminous coal in the mines now in Government possession, whose operation is covered by the Agreement of May 29, 1946. Of approximately 2,750 bituminous coal mines producing over 50 tons per day with rail and river connection, over 2,200 are in the possession of the Government under the Executive Order and operated under said Agreement of May 29, 1946. Of an approximate weekly average production of 12,130,000 tons from all bituminous mines, approximately 10,500,000 tons or 87% are produced from mines in Government possession.

8. At the commencement of the work stoppage on April 1, 1946, following termination of the Agreement of April 11, 1945, the coal stocks above ground in the United States were approximately 58,531,000 tons and the impact of the stoppage upon the economy of the country became crucial in less than two months. As of November 16, 1946, there were coal stocks above ground estimated at 57,000,000 tons. Nonproduction from and after November 21 of coal from mines in the possession of the United States would accordingly result in shut-down of essential industrial and transportation facilities of the United States progressively, as shown by the estimates conA9 tained in paragraph 7 of said table. From this it appears that within 60 days 64% of electrical power utilities, 60% of steel and rolling mills, 90% of byproduct coke plants, 86% of Class 1 railroads, 90% of cement mills, and 70% of other industrials would be shut down for lack of coal.

9. In addition to the above, the availability of bituminous coal for domestic heating purposes would be severely curtailed with severe detriment to the health and welfare of all persons occupying buildings and homes heated from coal.

10. Shipments of bituminous coal to foreign countries averaged nearly 600,000 tons per week in July and 322,560 tons of such coal was shipped to foreign countries November 1–12, 1946. The preservation of domestic stocks in the event of nonproduction of coal from mines in Government possession would probably require cessation of all foreign shipments, thereby vitally affecting the fulfillment of the commitments of the United States in this regard.

11. From the above, it clearly appears that the general welfare and the national economy would be vitally and irreparably damaged by

any extended nonproduction of bituminous coal from the mines in the possession of the Government and whose operations are subject to the provisions of the Agreement of May 29, 1946.

J. A. KRUG.

Subscribed and sworn to before me this 17th day of November 1946.

MARY M. REPELL,
in and for Wash. D. C.

My Comm. expires 12-1-49.

A10

1. Mines in government possession:	
(a) Total number of mines	2,250
(b) Average weekly tonnage produced	10,556,000
(c) Percent of total U. S. weekly production [1]	87.0
2. Mines in the United States with rail or river connections and other mines producing over 50 tons daily:	
(a) Total number of mines	2,850
(b) Average weekly tonnage produced	11,526,000
(c) Percent of total U. S. weekly production [1]	95.0
3. Bituminous Coal Stocks (net tons):	
(a) April 1, 1946	58,531,000
(b) October 1, 1946	52,367,000
(c) November 16, 1946 [2]	57,000,000
4. Bituminous production during spring 1946 strike period; tonnages for weeks ending:	
April 6	850,000
April 13	650,000
April 20	710,000
April 27	750,000
May 4	520,000
May 11	470,000
Average for six-week period	658,000

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

5. Number of bituminous coal miners:	
(a) Total all mines	400,000
(b) Total at mines in government possession	350,000
6. Bituminous coal shipments to Europe and North Africa in net tons: [3]	
July 1–9	690,368
July 10–16	607,712
July 17–26	416,640
July 27–30	840,672
Average weekly in July (4.29 weeks)	595,682
November 1–12	322,560

7. Estimated impact of coal strike on operations of industrial plants in the United States:

	Percent of Plants Forced to Shut Down or Curtail Production Within—			
Consumer Group:	*15 days*	*30 days*	*45 days*	*60 days*
Electric power utilities	18	35	53	63
Steel and rolling mills	9	23	46	60
Byproduct coke plants	29	78	84	90
Railroads (class I)	15	56	76	86
Cement Mills	22	56	84	90
Other industrials	25	42	57	70

A11

[1] Average weekly production for all bituminous mines in the United States, June 3–Nov. 9, 1946, was 12,1[illegible]00 net tons.
[2] Estimated.
[3] Shipments during months subsequent to July 1946 have been curtailed by maritime strikes.

A12 *Supporting affidavit of James Forrestal, Secretary of the Navy* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A13 EN1:3:am

AFFIDAVIT 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

WASHINGTON,

District of Columbia, ss:

I, James Forrestal, Secretary of the Navy, having been first duly sworn, do depose and state as follows:

That the total stocks of all types of coal on hand in coal piles located at naval installations within the continental limits of the United States are estimated to be 542,000 tons of which 437,000 tons is bituminous coal;

That consumption of coal within continental United States by the naval establishment for the month of September 1946, was 62,000 tons of all types, and it is estimated that requirements will increase to 145,000 tons per month for the winter months;

That the physical location of coal stocks among the various naval installations is not directly proportional to the requirements at such stations since some stations operate substantially on the basis of current needs, whereas at other stations, where storage conditions permit, coal stocks beyond immediate current needs have been accumulated as a reserve for use in the event of a failure in commercial supply, and therefore redistribution operations must commence in approximately twenty days after the date of cessation of deliveries;

That any reduction of railroad and other transportation operations will adversely affect the ability of the Navy to effect any necessary redistribution of the coal stocks among its installations;

That the foregoing does not take into consideration any diversion of Navy coal or increased demands for Navy power generated by coal which may be directed to meet the critical or emergency requirements of other users. Based upon past experience it is reasonable to anticipate that such diversions and increased demands will be made in case of any stoppage of coal production for any considerable period of time; and

A14

That any curtailment of the capacity of the Nation's industry and transportation facilities due to a serious coal shortage will have an adverse affect upon the effectiveness of the Navy in the performance of its functions.

The foregoing is true and correct to the best of my knowledge and belief.

(s) JAMES FORRESTAL,
Secretary of the Navy.

SUBSCRIBED AND SWORN TO before me, a Notary Public in and for the District of Columbia, this 18th day of November 1946.

(SEAL) LUCILLE HOLLAND /s/
Notary Public.

My Commission expires Nov. 5, 1951.

A15 *Supporting Affidavit of Robert P. Patterson, Secretary of War* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A16 WAR DEPARTMENT,
Washington, 18 Nov. 1946.

ROBERT P. PATTERSON, Secretary of War, being duly sworn, deposes and says:

In the event of a nation-wide strike of bituminous coal miners, the War Department would be first concerned with the resulting curtailment of domestic rail transportation to ports and the effect of such curtailment upon overseas shipments of food and other supplies, particularly flour and wheat for the occupied countries. Shipments of these two commodities are already behind schedule.

The Office of Defense Transportation informs me that American coal-burning railroads have on hand approximately 30 days' supply of coal and that a strike would mean an immediate curtailment of rail operations, which curtailment would increase in extent as the strike continued. It has been the War Department's experience in the past that such a situation would be felt by the War Department within a period of 10 days and would grow progressively worse.

The War Department also is seriously concerned with any diminution of the amount of coal available for export to occupied European countries and with the resulting adverse effect upon, and added cost to the United States of, rehabilitation activities in those countries.

While there is no immediate shortage in the coal supply for the War Department's own domestic installations, a continuance of a coal strike for any appreciable period would adversely affect the maintenance and operation of these installations.

ROBERT P. PATTERSON /s/

Subscribed and sworn to before me this 18th day of November 1946.

[SEAL] GLENN W. HITT, /s/
Notary Public.

(My commission expires 20 April 1950.)

A17 *Supporting affidavit of John D. Small, Administrator, Civilian Production Administration* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A18 In the District Court of the United States for the District of Columbia

Civil Action No. —

UNITED STATES OF AMERICA, PLAINTIFFS

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

Affidavit of John D. Small, Administrator, Civilian Production Administration

CITY OF WASHINGTON, *District of Columbia, ss:*

I, John D. Small, being first duly sworn, do hereby depose and say as follows:

1. I am the duly appointed Administrator of the Civilian Production Administration.

2. Bituminous coal is a basic material in industry and is the major fuel used to heat American homes. Bituminous coal is essential to the production of other basic materials, including steel, copper, lead, zinc, aluminum, cement, rubber and many others. These materials in turn are essential to every manufacturing and processing plant in the country, and are used to produce all kinds of consumer and producer goods such as refrigerators, washing machines, farm machinery, automobiles and trucks. In addition, coal itself is essential as a fuel or source of power for the operation of most industrial plants in the country.

3. Coal is used to produce electricity and manufactured gas. Over 50% of the electric power consumed in the country is dependent on coal. Many communities are dependent upon manufactured gas for heating and cooking.

4. Coal is the principal source of power used by the American railroads.

A19 5. Coal is the only fuel available to heat most American homes.

6. There is a world deficiency of available coal. War devastated areas of Europe are dependent upon American coal to help fill the wide gap between minimum requirements and available supplies.

7. I am informed and believe that as of October 1, 1946, industrial plants, including railroads, had not more than an average of 43 days' supply of bituminous coal on hand and retail dealers had not more than an average of 12 days' supply of bituminous coal on hand.

8. I am informed and believe that stocks of bituminous coal are now considerably lower than they were just prior to the Spring strike which started April 1, 1946.

9. I am informed and believe that the major industrial users had supplies of bituminous coal as follows on October 1, 1946, and on April 1, 1946.

	Oct. 1, 1946	April 1, 1946
Electric power utilities	70 days	95 days.
Byproduct coke ovens	22 days	36 days.
Steel and rolling mills	35 days	38 days.
Cement mills	41 days	42 days.
Other industrial users	58 days	48 days.
Railroads	30 days	39 days.

10. The supplies of coal mentioned above as of October 1, 1946, are based on the rate of consumption during September. With winter approaching, the rate of consumption will increase. I am informed and believe that stocks of coal on hand at present are therefore not more, and may be less, in terms of days supply, than the number of days supply on hand October 1, 1946.

11. The foregoing figures on supplies of coal are average figures. I am informed and believe that many industrial plants in all categories have stocks sufficient only for a few days operation. I am informed and believe that many retail dealers have virtually no stocks on hand at all but are making deliveries as rapidly as new supplies are
A20 received. Home owners who use coal for heating are dependent upon continued shipments of coal to the dealers.

12. Not only are actual coal stocks lower than they were before the coal strike last Spring but consumption is running higher both because of the seasonal requirements and the higher rate of industrial activity. Coal consuming plants, making everything from automobiles and refrigerators to cement and cast iron soil pipe for veterans houses, are now more fully manned than six months ago and are operating in many cases at maximum rates, limited only by availability of materials such as sheet steel or iron castings.

13. Many types of soft coal are not being produced in sufficient quantities to meet the current demands. Any stoppage in coal production will necessarily cause a loss in the production of manufactured products which cannot be made up. A stoppage in the production of bituminous coal will be felt throughout the economy. In some instances the impact will be immediate. Many industrial plants receiving coal on a hand-to-mouth basis will close immediately with resulant loss of wages to their employees. A stoppage in bituminous coal production will mean that in a matter of days a great many people will be without fuel to heat their homes.

14. Even where the impact is not immediate, a loss in bituminous coal production will mean a loss of production throughout industry with resultant unemployment. Bituminous coal is used at the beginning of a long production cycle. Because of this fact the impact of loss of coal production is not immediately felt at all stages of production. Even the basic industries such as steel are cushioned from the strike by stocks on hand and in transit. The steel consumer in turn is protected for an additional period of time since he can still draw on the "pipe line" of raw steel products. But these stocks of coal and materials on hand and in transit merely postpone the day when the disastrous efforts of the stoppage of coal at the source will
A21 be felt. Even after the miners return to the pits it takes 10 days to 2 weeks before coal consumers begin to receive a regular supply. Plants which have been forced to shut down for lack of fuel require additional time to build up sufficient stocks to resume operations. After that the first weeks of production of basic materials have to be used to refill depleted "pipe lines" and thus it goes throughout the whole intricate industrial system.

15. A stoppage of work in the coal mines for any period of time would, in my opinion, cause extreme hardship to many people. Each day's loss of production would mean an increasing slow-down in industrial production with more and more plants being forced to close. A stoppage in the production of coal for as long a period as the stoppage last Spring would close the steel mills and other basic material plants and would stall a major portion of the nation's transportation facilities. In turn, metal using industries and other plants would be

forced to close. In my opinion, a stoppage of coal production of the same duration as the one last Spring would ultimately bring American industry to a virtual standstill. Such a stoppage would not only create mass unemployment in all industrial centers but would create serious hazards to public health and safety. For example, stocks of food at food processing plants would spoil and the shortage of fuel, electric power and manufactured gas would reach into every home dependent on these utility services.

16. The cost to the economy of the coal strike last spring is a clear indication of the disastrous results which would follow a coal strike at this time. I believe that the Spring coal strike cost the country close to 2 billion dollars in loss of production, not counting the loss in wages by the million-odd workers made idle by the strike. The production of durable goods, including automobiles, was set back at least three months by the strike. Important programs, such as the food program and the Veterans' Emergency Housing Program, received serious setbacks; the production of critical building materials, such as brick tile, cement, gypsum board, heating equipment, cast iron soil pipe, pressure pipe, nails, sheet steel, and many others suffered irreparable damage from the coal shortage. Zinc and lead production was lost because of the power shortage resulting from lack of coal.

A22 17. Steel production lost as a result of the last soft-coal strike amounted to approximately 5 million ingot tons. This loss of steel tonnage in an economy already very short of steel has hampered, and is still retarding, production.

18. The loss of merchant pig iron accompanying the shut-down of blast furnaces due to the last coal strike cut into the output of such critical building materials as soil pipe, pressure pipe, radiators, and bathtubs—items which are now holding back the Veterans' Emergency Housing Program. The loss of merchant pig iron production affected other important industries using malleable and gray iron castings, for example, automobiles, railroad equipment, farm machinery, and fractional horsepower motors. Particularly hard hit were manufacturers of component parts for automobiles and trucks, such as wheels, piston rings, and steering wheels. Months later automobile production is still being delayed by shortages of particular component parts, with a resultant lack of balance causing swollen inventories, increased costs, and a lack of smooth production.

19. In my opinion, a prolonged suspension of bituminous coal mining would cause irreparable injury to the economy of the country—to industry and to labor—and would cause acute hardship and suffering to untold numbers of people.

JOHN D. SMALL /s/

Subscribed and sworn to before me this 18th day of November 1946.

[SEAL] FLORENCE I. BLOOMBERG /s/.
Notary Public, D. C.

My commission expires March 1, 1947.

A23 *Supporting affidavit of G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission* 37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A24 In the United States District Court for the District of Columbia

37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

G. H. Helmbold, being duly sworn, deposes and says:

I am the Managing Director, Ship Operations, United States Maritime Commission, and make this affidavit on behalf of said United States Maritime Commission and its Chairman.

The United States Maritime Commission was created by an act of Congress, approved June 29, 1936 (49 Stat. 1985), to administer the Merchant Marine Act of 1936; which is expressly intended to foster and develop a United States Merchant Marine capable of carrying a substantial portion of our water-borne imports and foreign exports, and to serve as a naval and military auxiliary in time of war or national emergency.

In addition, the Commission is responsible for administering the Merchant Marine Sales Act of 1946, the purpose of which is to dispose of the large war-built tonnage to private operators. The Commission is now carrying on many of the final phases of the War Shipping Administration's activities. It has been operating a substantial number of ships but it is endeavoring as rapidly as possible to transfer from government operation to private operation. The Commission is, therefore, directly concerned with any activity which in any way interferes with government-operated ships as well as anything which retards the sale or charter of government-owned vessels.

A25 Coal is an important export commodity at this time not only from the point of view of shipping but also for the rehabilitation of the devasted foreign areas. Coal exports from the United States now utilize approximately 250 shipments per month. Most of these in the early months of this year were carried by government-owned and operated vessels. As of this date the major portion of those vessels are privately operated vessels held under bare boat charter from the Government. If there is a reduction in the amount of export coal, many bare boat operators will be compelled to return these vessels to the United States Government with a consequential loss of revenue to the Government. All the charters contain a provision that either party (United States Government or the charterer) may cancel on 15 days' notice.

Aside from the number of vessels that may be returned by these charterers, other vessels now under consideration for charter, will not be chartered if there is a reduction in the amount of export coal. A stoppage of coal exports at this time will, therefore, directly affect

the Commission's policy in endeavoring to rejuvenate private operation of the United States Merchant Marine.

The Commission is also concerned with the direct effect of a stoppage on the number of persons employed directly and indirectly in the shipping industry. It is estimated that about 25,000 persons, including ships' crews, stevedores, terminal operators and others directly and indirectly concerned with the coal export program will be placed in unemployment for the duration of any suspension of coal mining.

At the present time approximately 2,000,000 tons of coal are being moved every month in coastwise traffic, either all water-borne or partly water-borne or partly carried by rail. At the same time
A26 between 1,800,000 and 2,100,000 tons a month are being carried from coast ports to European areas. The coastwise traffic involves approximately 50 privately owned vessels while the foreign trade involves a total of approximately 500 ships (250 ships going out and 250 ships coming in). Of this total, about 400 ships are Government-owned, directly operated or bare-boat-chartered. The balance are foreign flag.

A complete stoppage of production at the coal mines would soon completely interrupt this foreign and coastwise traffic with not only the disruption of revenue to the Government and private operators but would also result in serious unemployment conditions. This interference and its dangerous results are wholly apart from indirect and additional interferences with shipping which would result from any interference with rail transportation.

The shipping industry is, of course, generally dependent upon rail transportation for receipt of its general cargoes and for ship supplies.

At the present time a total of 1,863 vessels of government ownership operated either by the Government under general agency agreements or by private operators under bare-boat charters, are now in service. It is estimated that an additional 600 American-flag vessels of private ownership are now in operation. To the extent that a stoppage of coal mining results in interference with rail transportation and consequently with delivery of cargoes and supplies to shipside, all of these vessels can be put wholly or partly out of service in a short time.

In the event that the 400 Government vessels now engaged in carrying coal are put out of service, I estimate that the monthly loss to the Government in freight and charter hire, together with the loss resulting from laying up expenses would amount to an aggregate of approximately $11,250,000 per month.

A27 The actual effect of a stoppage of coal production was demonstrated in the months of April and May, 1946, when the coal miners refused to work until a new contract had been awarded them. In the month of March, 1946, a total of 258 coal cargoes were carried in the export trade; in the month of April, when the strike occurred, the number of cargoes so carried fell to 101; in the month of May, the number again fell to 41; in the month of June, although the miners had returned to work in May, the effects of the stoppage were still felt and only 126 cargoes were carried. It was not until July that normalcy was again reached.

Under these circumstances, the threatened stoppage of bituminous coal mine production will seriously disrupt the shipping industry,

interfere with present programs relating to the liquidation of the government ownership in the Merchant Marine and the reestablishment of private operation, would seriously affect employment in the merchant marine, and related fields of employment and would result in serious and irreparable injury to the Government and private ship operators as well as the American people and all others dependent upon our coal exports.

G. H. HELMBOLD /s/.

Subscribed and sworn to before me this 18th day of November 1946.

[SEAL] RUTH HOLM /s/.

My commission expires June 30, 1949.

A28 *Supporting affidavit of*
Leland Olds, Chairman, Federal Power Commission

37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A29 In the United States District Court
For the District of Columbia

37764

UNITED STATES OF AMERICA, PLAINTIFF,

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

LELAND OLDS, being duly sworn, deposes and says:

I am the Chairman of the Federal Power Commission, the regulatory Commission created under the Federal Power Act to have jurisdiction over, among other things, electric utility systems engaged in interstate commerce. Under Section 202 (c) of that Act the Commission is given the power during the continuance of war or whatever an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of such energy, or facilities for the generation or transmission of such energy, or of fuel or water for generating facilities, or other causes to require temporary connections in such generation, delivery, interchange, or transmission of electric energy as in the Commission's judgment will best meet the emergency and serve the public's interest.

Any interruption of the production of bituminous coal in the United States would undoubtedly bring about an emergency in the United States calling for restrictive measures to protect the supply of electric energy used in homes, commercial enterprises and industry, so that services for the protection of public health and safety, hospitals, food processing, and other essential community services may be protected.

A30 At the present time electric utility systems have an average of about 60 days' supply of coal for the generation of power. This supply is well below the amount such systems maintain in normal times but due to recent conditions such systems have not been able

to accumulate their normal supply of fuel. In the north central region of the United States 80% of electric energy is generated from coal; in the northeastern region 70% of the power is generated from coal; approximately six-sevenths (6/7) of all power is generated from bituminous coal.

Apart from this ordinary dependence upon coal as a source of electric energy there is at present a greater demand than ever for electric energy, greater even than during the war years. The demand during the past two weeks, for example, has been higher than the demand during the peak of war activities. This increased demand presents a virtual emergency in itself which is at present straining the capacity of the electric industry to meet.

In addition the winter season of peak demands is now being approached and may be expected to be reached the latter part of December. Accordingly, in the normal course of events it should be anticipated that when the winter peak is reached this year the electric industry will be faced with the highest demands ever made upon it at any time.

When the production of coal was interrupted in April 1946, continuing into the month of May 1946, the supply of coal held by electric utility systems was approximately equivalent to their present supply. At that time it was found necessary to recommend curtailments of electric service after the walkout had continued for a period of about 30 days and there was approximately a 30-day supply on hand. Drastic curtailment orders were actually issued in Indiana and Illinois, and curtailment orders in other states were contemplated. If the interruption of production had continued longer than it
A31 did very serious curtailment would have been necessary throughout all the areas where coal was used for the generation of electric power.

In cases where curtailment was directed, industrial and commercial use was restricted to the equivalent of one day a week and in most cases this practically caused a complete shut-down. If the previous interruption had continued for a longer period, it would have been necessary in such cases to practically eliminate all industrial and commercial use and to go into what was to be considered the final stage of restriction when the use of electric energy would have been entirely prohibited except for public health and safety, hospitals, food processing and other essential community services.

If the presently threatened interruption of coal production occurs, the situation will be considerably worse by reason of the fact that the present season of the year makes the results much more disastrous. At the time of the April and May 1946 interruption, the winter fuel demands had ended and a period was being reached when competition with the fuel demands of homes, institutions, and the like were diminishing to the lowest point. With fullest consideration being given to alternative types of fuel, all of which were carefully studied and examined during the period of the last emergency, there is no way of providing adequate substitutes which would avoid the severe curtailments indicated above.

The presently threatened interruption soon would disrupt practically all electric systems east of the Mississippi River. It would certainly bring all industries dependent on those systems to a standstill,

and seriously endanger not only our entire national economy but the health and welfare of millions of citizens.

With the seasonally reduced demands for coal which existed
A32 at the time of the last coal emergency, it appeared that in any case where there was a complete exhaustion of coal supply the generating company could not resume its normal supply of energy until 12 or 14 days after actual resumption of mining. If a similar situation were to result during the coming winter months the period for resumption would necessarily be longer. Any interruption resulting in either a complete or partial depletion of supply of coal on hand necessarily affects generation activities and results in irreparable damage.

LELAND OLDS /s/

Sworn to before me this 18th day of November 1946.

[SEAL] BERNICE P. STONE,
Notary Public.

A33 *Supporting affidavit of James A. Crabtree, Acting Surgeon General, Public Health Service*

37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A 34 In the United States District Court for the District of Columbia 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

JAMES A. CRABTREE, being duly sworn, deposes and says: I am Acting Surgeon General of the United States Public Health Service, and I make this affidavit at the request of the Department of Justice to set forth the probable effect upon the public health that might reasonably be expected to accrue from the threatened interruption in production of coal.

Among public health authorities, it is the generally accepted opinion, supported by a substantial body of scientific data, that, for purposes of health and comfort during the cold winter season, the optimum range of temperatures to be maintained in residences and other living quarters is, under appropriate conditions of humidity, from 60 degrees to 70 degrees Fahrenheit. Temperatures higher than 70 degrees may be required to maintain health and to protect the life of certain individuals and under certain circumstances.

In the event that production of coal in the United States is interrupted during the coming winter months to the point where the homes, hospitals, public-service facilities, such as public water supply and sewage-disposal systems, and essential health and medical
A 35 supply industries, now relying upon coal a source of heat,

and power cannot obtain such heat and power, I am of the opinion that the public health of the United States would be seriously jeopardized.

To the extent that other fuels and sources of power are not available, coal is absolutely indispensable for the continued operation and maintenance of all institutions for the care of the sick, of such services as public water supplies and sewage-disposal systems, and of those enterprises devoted to the manufacture and distribution of drugs and other commodities essential for the protection of health. A disruption of such institutions, services, and enterprises, particularly at a time when healthful conditions of temperature could not be maintained in individual homes, would have a disastrous and irreparable effect upon the health and welfare of the nation.

JAMES A. CRABTREE (S)

Subscribed and sworn to before me this 18th day of November 1946.

[SEAL] MARY M. REPETTI (S),
Notary Public in and for Wash., D. C.

My Comm. expires 12–1–49.

A36 *Support Affidavit of J. M. Johnson, Director of the Office of Defense Transportation*

37764

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

A37 AFFIDAVIT OF J. M. JOHNSON, DIRECTOR OF THE OFFICE OF DEFENSE TRANSPORTATION

37764

Filed Nov. 18, 1946, Charles E. Stewart, Clerk.

UNITED STATES OF AMERICA,
District of Columbia, ss:

J. M. Johnson, being first duly sworn, upon oath deposes and says:

He is a member of the Interstate Commerce Commission and the duly appointed, qualified and acting Director of the Office of Defense Transportation and, as such, maintains his office and official residence in the City of Washington, District of Columbia. In his official capacity he is familiar with the domestic transportation facilities of the Nation and the needs thereof, and, in particular, the needs of the common carriers by railroad in the United States (hereinafter referred to as "railroads") with respect to bituminous coal used by them in the performance of their public duties as common carriers of passengers and freight.

At the date hereof there are approximately 141 Class I railroads (i. e. having annual operating revenues above $1,000,000) operating in the United States, and more than 600 railroads of all classes. About 80 percent of the locomotives of these railroads depend upon bituminous coal for fuel to provide motive power. Approximately 25 percent of the bituminous coal production of the United States is consumed by these railroads in providing common-carrier service.

At the present time, approximately 75 percent of the freight traffic in the United States is transported on railroads. Moreover, other

forms of public transportation—air, highway, and water—are
A38 primarily dependent upon railroad transportation for their fuel to permit their continued operation. Furthermore, in many cases where railroads are powered by electrical energy, they receive their power from steam-generated plants requiring coal as a fuel. Additionally, in some cases, manufacturers of oil and distillates for use in powering diesel locomotives, use coal as a fuel in their refining processes.

Based on the consumption of coal by the railroads as of November 1, 1946, they now have on hand in stock piles an average of 30 days' supply; ten railroads have actually less than a 10 days' supply of coal on hand, while six railroads have a coal supply ranging from 10 to 15 days.

At the present time, railroads are in their seasonal peak loadings, requiring the movement of more trains and heavier trains than at any other season of the year. The present volume of freight being transported by the railroads is heavier than at any period since 1930. The average weekly carloadings of the railroads for the six weeks' period ending November 9, 1946, was approximately 919,000 cars. This figure exceeds any average attained during World War II and is the highest since the year 1930. With the coming of cold weather and a continuation of peak traffic demands, more trains may be necessary because of the necessity of reducing tonnage on individual trains due to winter conditions. There is a backlog of several hundred thousand carloads of freight to be moved, including a large quantity of grain for domestic consumption and for export under the Nation's relief program, steel, materials for housing, livestock, and other commodities, which are being delayed because of a shortage in the car supply. The railroads are now contending with a coal
A39 production which is being produced at the rate of about 650,000,000 tons per annum. This exceptionally heavy production is occasioned by an attempt to produce in a ten-month period the normal consumption of a calendar year; this, due to a previous stoppage during 1946 of approximately 60 days in coal-mining operations. Should there be a further stoppage of coal-mining operations at this time it would have the effect of adding an intolerable burden on the railroads when mining operations were resumed and industries generally sought to reestablish normal inventories of fuel.

Continued operation of the railroads in the United States depends on their ability to continue receiving coal. Failing to receive a continuous supply of coal, restrictive action will become immediately necessary in order to extend the present fuel supply for as long a period as possible and to continue the transportation of necessities. By reason of the threatened interruption in the production of bituminous coal, the Office of Defense Transportation has issued an order, effective November 24, 1946; reducing passenger-train mileage performed by coal-burning steam locomotives by 25 percent. Consideration is now being given by the Office of Defense Transportation to restricting freight transportation. The first restriction to be issued, as soon as conditions warrant it, will be the elimination of all nonessential traffic. This will include all export freight to foreign countries, including Canada and Mexico, except food, clothing, and medicines. Additional restrictions, in the event of a stoppage of coal pro-

duction, will be imposed in the light of the quantity of coal that
A40 is allocated to the railroads by the Solid Fuels Administration for War under its priority regulations,

[s] J. M. JOHNSON.

Subscribed and sworn to before me this 18 day of November 1946.

[SEAL] [s] LILLIAN L. COOLEY,
Notary Public.

In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS.

Memorandum on behalf of the United States in support of application for a temporary restraining order and preliminary injunctive relief

Filed Nov. 18, 1946. Charles E. Stewart, Clerk.

In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Memorandum on behalf of the United States in support of application for a temporary restraining order and preliminary injunctive relief.

PRELIMINARY STATEMENT

This is an action brought by the United States of America, in its sovereign capacity, against the defendant United Mine Workers of America and the defendant John L. Lewis, president of the United Mine Workers of America.

The purpose of this action is to obtain a declaration by this Court that the defendants neither had nor have any right to issue a notice purporting unilaterally to terminate the so-called "Krug-Lewis" agreement, now in effect at the bituminous coal mines in the possession of the United States, and that the issuance of such a notice by defendants, or a declaration that there is no existing contract in effect at those mines, is unlawful and of no force. In addition, plaintiff asks that, pending final determination of the issues in this cause, the Court forthwith issue a temporary restraining order and a preliminary

injunction in the manner and form set forth in the prayer
1 of the complaint, in order to prevent a frustration of the relief ultimately sought in this proceeding.

2 The facts involved in this controversy and the legal bases for the relief here requested are set forth in full in the complaint. In substance, the defendants contend that they have the right, by unilateral notice, to terminate the Krug-Lewis agreement entered into by the defendant John L. Lewis on their behalf with the Secretary of the Interior acting as Coal Mines Administrator on behalf of the United States; whereas, on the other hand, the United States contends that the Krug-Lewis agreement remains effective for the entire period of Government possession, except insofar as it may be modified by mutual consent or by order of the National Wage Stabilization Board issued pursuant to Section 5 of the War Labor Disputes Act; that the defendants neither had nor have the right by unilateral notice to terminate the agreement; and that the notice given by the defendant John L. Lewis on November 15, 1946, purporting unilaterally to terminate the agreement on November 20, 1946, is unlawful and of no force or effect.

Plaintiff asserts that the notice of November 15, 1946, purporting to terminate the Krug-Lewis agreement, is unlawful for the following reasons:

(1) It constitutes a breach of the obligations assumed by the defendants under the Krug-Lewis agreement for the period of Government possession;

(2) The defendants have thereby coerced, instigated, induced, and encouraged the mine workers employed in the bituminous mines in the Government's possession to interfere by strike, slow-down, and other interruptions, with the operation of those mines; and

3 (3) The defendants have thereby interfered with the sovereign functions of the United States of America exercised for the general welfare, and necessary to insure operation of the mines in the interest of the war effort and to preserve the economic structure in the present emergency.

The complaint alleges that the action of the defendants in issuing the notice of November 15, 1946, and in permitting it to continue outstanding, threatens to result in irreparable injury to the people of the United States, and that unless this Court intervenes and grants the relief prayed for herein, a national catastrophe, disastrous to the health, safety, and welfare of the Nation and the national economy, will result.

4 I. THE DEFENDANTS HAVE NO POWER, BY UNILATERAL NOTICE, TO TERMINATE THE KRUG-LEWIS AGREEMENT; AND THE NOTICE OF NOVEMBER 15, 1946, ISSUED BY THE DEFENDANT JOHN L. LEWIS, PURPORTING TO TERMINATE THE KRUG-LEWIS AGREEMENT, CONSTITUTES AN UNLAWFUL BREACH OF THE SAID KRUG-LEWIS AGREEMENT.

The Krug-Lewis agreement "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945." The Krug-Lewis agreement revived the terms and

conditions of the terminated National Bituminous Wage Agreement dated April 11, 1945, "except as amended and supplemented" in the Krug-Lewis agreement.

The National Bituminous Wage Agreement provided in Section 15 as follows:

> 15. This agreement, dated this 11th day of April 1945, shall be effective as of April 1, 1945, and shall continue in effect hereafter subject to the conditions and termination as herein provided. At any time prior to April 1, 1946, in the event a significant change occurs in the government wage policy, either party shall have the right to request negotiations on general wage rates.
>
> At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days after the beginning of such negotiating conference, either party may give to the other a notice in writing of the termination of this agreement, to be effective five days after the receipt of such notice.

It is the defendants' contention that these provisions of Section 15 have been carried over by the Krug-Lewis agreement, and that, therefore, the defendants have the right to terminate the Krug-Lewis agreement pursuant thereto. This contention, we submit, is clearly without merit.

Section 15 is essentially a termination provision, which sets forth the procedure for modification and termination of the April 11, 1945, agreement after expiration of a period of at least one year. Such a provision was necessary in that agreement for the obvious reason that it had no other termination date. The Krug-Lewis agreement, however, specifically provides that it covers the terms and conditions of employment "for the period of government possession." Thus the Krug-Lewis agreement has an express provision covering its duration and a definite termination date, which has not yet arrived. Accordingly Section 15 was in fact and in substance "amended and supplemented" by the Krug-Lewis agreement and was not in any sense carried over for the period of Government possession.

This conclusion is reenforced by an examination of the provisions of the War Labor Disputes Act, under which possession of the mines was taken by the United States. The provisions of that Act contemplate, first, that the operations of the mines in the Government's possession shall continue without interruption; and second, that there shall be an equitable approach to the problem of fixing terms and conditions of employment in such mines during the period of Government possession. They set forth in detail the method whereby changes in terms and conditions of employment at the Government-possessed mines may be effected; Section 5 specifically provides that after possession has been taken by the Government, "the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility, or their representatives may apply to the National War Labor Board (now its successor agency, the National Wage Stabilization Board) for a change in wages or other terms or conditions of employment in such plant, mine, or facility." The Krug-Lewis agreement was entered into, and must,

of course, be interpreted and applied, in the light of the objectives of the Act. In accordance with the provisions of Section 5, the National Wage Stabilization Board, on May 31, 1946, issued an order with the approval of the President, in substance promulgating the terms and conditions of employment agreed upon in the Krug-Lewis
6 agreement. To accept the defendants' contention that they can now unilaterally terminate the agreement would be to ignore the congressional policy and program thus plainly enunciated in the War Labor Disputes Act.

Nor can any other view reasonably be taken. The agreement of April 11, 1945, by its terms, had stability, since, pursuant to Section 15, it endured for a period of at least one year. To accept the defendants' contention as to the meaning of the Krug-Lewis agreement would, on the other hand, render that agreement unstable since it would permit termination of that agreement within 30 days after its execution. It is incredible that the defendants and the Coal Mines Administrator would enter into an agreement expressly for "the period of government possession," with the intention that it might be upset by either party as a matter of right, within 30 days.

Moreover, that the Krug-Lewis agreement could not contemplate that the defendants might, by unilateral notice, terminate the agreement, appears clear from an analysis of the significance of the notice of termination, when considered in the light of Section 6 of the War Labor Disputes Act. As appears from the complaint and the affidavits attached thereto, a notice or declaration by the defendants that the Krug-Lewis agreement is terminated, constitutes, in fact and in effect, a call to strike, inasmuch as it has been a long established policy, consistently followed by the defendants, that members of the Union should work only when there is in effect a contract to which the Union is a party. Therefore, the defendants when they assert that the Krug-Lewis agreement was designed to give them the right to terminate the agreement unilaterally, in fact say that the Coal Mines Administrator and the defendants contracted to afford to them the right to take action specifically made unlawful by the provisions of Section 6 of the War Labor Disputes Act, as more fully appears below. Such a contention obviously cannot be sustained.

7 II. THE NOTICE OF NOVEMBER 15, 1946, PURPORTING TO TERMINATE THE KRUG-LEWIS AGREEMENT, IS IN CONTRAVENTION OF THE PUBLIC POLICY DECLARED BY THE CONGRESS, OBSTRUCTS AND INTERFERES WITH THE EXERCISE OF SOVEREIGN FUNCTIONS OF THE UNITED STATES, AND IS CONSEQUENTLY UNLAWFUL

The action of defendants purporting to effect, by unilateral notice, the termination of the Krug-Lewis agreement during the period of Government possession, is unlawful not only because it constitutes a breach of the obligations assumed by the defendants when they entered into that agreement, but also because it contravenes the public policy declared by the Congress, and because it obstructs and interferes with the exercise of sovereign functions of the United States.

Section 6 of the War Labor Disputes Act provides in part as follows:

"(a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person,

to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein."

As we have indicated above, the notice of November 15, 1946 constitutes in substance and in effect a call to the mine workers employed at the bituminous coal mines in the Government's possession to cease work at those mines in concert at midnight on November 20, 1946. For, in accordance with the long established policy and practice already referred to, under which the Union members, upon the mere announcement by the defendant Lewis that an existing contract has been voided or terminated, or that no contract exists, have quit their work
8 en masse and have continued to stay out of the mines until the defendant Lewis has announced that a contract again exists, it is plain that the notice of termination of November 15, 1946, will have just such a result and that the defendants, in issuing that notice, were well aware of its inevitable consequences. In issuing the notice, therefore, and in continuing to permit the notice to remain outstanding, the defendants coerce, instigate, induce, and encourage the mine workers to interfere by strike and other interruptions with the operation of the mines in the Government's possession. That the acts so declared unlawful may be punishable as crimes does not detract from the Government's right to procure, in a court of equity, a declaratory judgment of their unlawful character and an injunction restraining their performance. See e. g. *In re Debs*, 158 U. S. 564.

In addition to the fact that the defendants' action here complained of contravenes the public policy clearly enunciated by the Congress in the War Labor Disputes Act, there is the doctrine of long standing that the Federal Government is entitled to judicial protection of its rights lawfully to exercise its sovereign functions without interference and obstruction. *In re Debs, supra; United States* v. *Frank J. Hayes, et al.* (D. Ind., November Term 1919, Equity No. 312, unreported); cf. *United States* v. *Railway Employees Department*, 283 Fed. 479 (N. D. Ill.), and sec. 286 Fed. 228 (N. D. Ill.), and 290 Fed. 978 (N. D. Ill). In the *Debs* case, the Supreme Court upheld as valid an injunction issued against officers of a labor union restraining a strike against the Pullman Company on the ground that such an injunction was justified to remove obstructions to the exercise of the Government's powers in connection with the regulation of interstate commerce and the transmission of the mails. Although some may question the present vitality of the holding in the *Debs* case, there can be no question that the basic doctrine which it enunciated is valid and applicable here. For here the Government, in the exercise of its vital war powers, has taken possession of the coal mines, and is engaged in the control and operation of those mines, and it asks the Court to prevent by injunction and to declare unlawful, acts interfering with and obstructing the effective exercise of such essential sovereign powers. The denial of such relief would frustrate the powers conferred by the Constitution and the Congress on the President to seize properties vital to the war and reconversion efforts.

9 III. THIS COURT HAS POWER TO GRANT INJUNCTIVE RELIEF PENDING THE FINAL DETERMINATION OF THE ISSUES PRESENTED BY THIS CASE

We believe that it has been conclusively demonstrated that the notice of November 15, 1946, is, and that any such notice or declaration which defendants may hereafter issue would be, unlawful. In view of that circumstance, in light of the substantial controversy which plainly exists between plaintiff and the defendants, and in the face of the irreparable injury threatened to plaintiff and the public interest, as shown below, plaintiff is clearly entitled to the declaratory judgment prayed for in the complaint. *Oil Workers Intern. Union* v. *Texoma Natural Gas Co.*, 146 F. (2d) 62 (C. C. A. 5), certiorari denied 65 S. Ct. 1017.

The United States here also requests the issuance of a temporary restraining order and a preliminary injunction pending the final determination of the issues in this case. The power of this Court to grant plaintiff such injunctive relief is equally clear. We have already noted the availability of the injunctive process to protect the exercise of the sovereign functions from obstruction and interference. And the power of a court to enjoin breaches of contract is likewise traditional. *Commercial Telegraphers Union, AFL* v. *Western Union Telegraph Co.*, 53 F. Supp. 90 (D. D. C.); *United States* v. *American T. and T. Co.*, 57 F. Supp. 451, affirmed sub. nom. *Hotel Astor* v. *United States*, 325 U. S. 837.

Nor are the Government's rights to injunctive protection in any way affected by the provisions of the Norris-LaGuardia Act, 29 U. S. C. Secs. 101 et seq. The Norris-LaGuardia Act marked the culmination of a fifty-year controversy as to the right of workers in private employ to organize and by collective means to obtain acceptable terms and conditions of employment. Specifically, it removed the injunctive process from the area of labor combat between employer
10 and employee. Cf. H. Rept. 669, 72d Cong., 1st Sess., pp. 3 ff.; *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products*, 311 U. S. 91, 102; *Virginian Railway* v. *System Federation*, 300 U. S. 515, 563; *Columbia River Packers Association* v. *Hinton*, 315 U. S. 143; 75 Cong. Rec. 4619, 5464, 5470, 5478, 5488. In no sense, however, does the Norris-LaGuardia Act purport to deal with the problem here presented: the invocation by the United States of the equitable powers of the courts to prevent irreparable injury to the interests of the people of the United States pending a peaceful judicial determination of a disputed legal problem.

Initially, it should be observed that the Norris-LaGuardia Act does not, in specific terms or by necessary implication, apply to the United States, and, accordingly, on traditional grounds of construction, the Government would not be bound by its provisions. *Dollar Savings Bank* v. *United States*, 19 Wall. 227; *Guarantee Title and Trust Company* v. *Title Guarantee Company*, 224 U. S. 152; Black, *Interpretation of Laws* (2d Ed.), p. 94. In fact, in the absence of a clear legislative purpose to limit the Government's use of the equity powers of the courts for the general welfare, a provision in the Norris-LaGuardia Act specifically reserving to the United States its power to

obtain injunctive protection would merely have been declaratory of an already existent public policy. Cf. *Jewish Hospital of Brooklyn* v. *John Doe*, 252 App. Div. (N. Y.) 581, 586. The legislative history of the statute shows no such limiting purpose. On the contrary, it is quite clear that the Act was not intended to limit or affect the sovereign powers of the United States or to curtail the jurisdiction of the Federal courts when invoked by the Government in support and protection of its sovereign functions.

11 Representative Michener, a member of the committee which reported the bill which became the Norris-LaGuardia Act, stated, in his description of the measure (75 Cong. Rec. 5464):

> "* * * I do not believe that the enactment of the bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government."

Similarly, Representative LaGuardia, the sponsor of the legislation in the House, stated that he did not see any possible way in which "* * * the United States can be brought in under the provisions of the bill. * * *" 75 Cong. Rec. 5640.

It is true that some courts have held that the United States may not, because of the limitations of the Norris-LaGuardia Act, obtain injunctions to restrain labor union action in cases involving or growing out of *bona fide* labor disputes affecting private employers and their employees. *United States* v. *American Federation of Musicians*, 318 U. S. 741, affirming 47 F. Supp. 304 (N. D. Ill.); *United States* v. *Weirton Steel Co.*, 7 F. Supp. 255 (D. Del.); cf. *Columbia R. Co.* v. *Hinton*, 315 U. S. 143, 145. The controversy stated in the complaint here, however, is plainly beyond the scope of those decisions, as the legislative history of the Norris-LaGuardia Act itself shows. Here there is not and cannot be a *bona fide* labor dispute necessary to call the Norris-LaGuardia Act into play. For, the sovereign, in the exercise of its functions, can at no time be held to be engaged in a labor dispute with private persons.[1] Cf. *Petrucci* v. *Hogan*, 27 N. Y.

12 Supp. (2d) 718 (Sup. Ct. N. Y.); *Society of the New York Hospital* v. *Hanson*, 185 Misc. 937 (Sup. Ct. N. Y.); *Jewish Hospital of Brooklyn* v. *Doe*, *supra*.

The United States appears in this proceeding for the purpose of obtaining a judicial declaration on a disputed contract question—a question which exists only by virtue of the exercise by the Government of its sovereign emergency and welfare powers in seizing the coal mines. The very purpose of the seizure was to prevent the irreparable injury to the public which inevitably flows from a work stoppage at the mines. The prayer for interim injunctive relief now before this Court is solely for the purpose of continuing the protection of the public interest initially obtained by the seizure of the mines until at least such time as the disputed question of law can be determined. In no sense is this an attack upon the right of labor to organize or to bargain collectively, nor is this an attempt to use judicial power in the area of economic strife which exists between employer and employee. The entire case falls well outside the area designed to be covered by the Norris-LaGuardia Act.

13 IV. A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION SHOULD BE ISSUED ON THE FACTS IN THE COMPLAINT AND THE MOVING AFFIDAVITS TO PRESENT IRREPARABLE INJURY

It has been shown by verified complaint and affidavits that the defendants' notice of November 15, 1946, purporting to terminate the Krug-Lewis agreement, is, according to a now familiar pattern, the signal for invocation of the coal miners' traditional practice of walking out of the mines when the defendant Lewis asserts that there is no contract. Accordingly, a concerted work stoppage at most of the mines in Government possession is in prospect, and the general result of such a walk-out in late November at the outset of winter is easily foreseeable.

The coal strike of April and May 1946 occurred after the demands of winter had ceased, but, nevertheless, the lesser effects of a walk-out then give clear indications of the greater impact to be expected from the present threat.

The moving affidavits show that a great many homes, many public institutions, substantial industries, a substantial portion of our electric utility systems, and a large amount of domestic and foreign shipping are absolutely dependent upon coal. It appears that only limited supplies of coal are on hand, ranging in some cases from a few days' supply to sixty days in other cases, and that interruption of supply will soon disrupt our entire national economy, endanger public health and welfare, create unemployment, cause untold hardships to millions of citizens, cripple industrial production of all kinds, interfere with the operations of our armed forces, and prevent shipments to devastated foreign areas which have become so dependent on our help and productivity.

Over 2,200 mines producing bituminous coal will be involved. These produce about 10,500,000 tons of coal per week, or 87% of the nation's entire production of bituminous coal. About half a million tons of this weekly output are currently being shipped overseas.

14 One disastrous effect of a stoppage of coal production appears from the fact that in the north-central states and the north-eastern states, a considerable part of our electric utility systems is dependent upon coal. Industry, public services, commercial business and the public in general are in turn dependent upon those systems. The Chairman of the Federal Power Commission points out in his affidavit that wholly apart from the threatened interruption by the coal mine situation, a virtual emergency already exists in electric services in that the present day demand for electric energy is at a peak exceeding all wartime demands, and that the capacity of those systems is presently strained despite the fact that normal winter demands will soon reach an all time high peak.

The affidavit of the Civilian Production Administrator shows the awful impact threatening our entire national economy in every vital field. He points out that our industrial production is now operating at the highest possible capacity limited only by shortage of critical materials, but that all this progress will be brought to a halt by a miners' walkout. The Administrator points out that the coal strike in the spring of 1946 cost the country close to two billion dollars in

loss of production not counting the loss in wages to over a million workers made idle by that strike. A winter strike in the face of greater activity and higher production is bound to result in a considerably greater loss.

The affidavit of the Chairman of the United States Maritime Commission shows that the threatened walkout of the miners will not only interfere with a substantial amount of shipping of coal in coastwise and foreign trade but will also result in considerable loss of income to the Government in the operation of vessels under Government ownership. The reduction in coal shipments will also lead to the cancellation of a number of bareboat charters and this in turn results in a loss of charter hire. At the same time, this result interferes with the Maritime Commission's endeavors to return vessels to
15 private ownership. It appears that approximately 550 vessels would be involved, and if those vessels were laid up, approximately 25,000 persons would be thrown into unemployment.

The affidavit of the Secretary of the Navy indicates that the threatened walkout is bound to cause serious interference with the presently wide flung operations in the armed forces and will necessarily have an adverse effect upon their effectiveness in the performance of their functions.

Finally, the affidavit of the Acting Surgeon General of the United States Public Health Service points to the importance of maintaining proper temperatures for purposes of health and comfort during the cold winter season, and to the necessity of maintaining adequate temperatures in many cases to protect the health and life of individuals. He refers to the danger to public welfare when homes, hospitals, public service facilities such as public water supply, sewage disposal systems, and essential health and medical and supply industries are unable to obtain coal, the necessary source of heat and power.

Injunctions will issue to give full protection to the public interest. "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginian Railway Company* v. *Federation*, 300 U. S. 515, 552.

From all of the foregoing, it is clear that the threatened interruption of coal production must lead to great and irreparable loss and damage to the public. The Government seizure of the mines was authorized by and carried out specifically to prevent the very situation which is now threatened. The present threat is directly to interfere with a sovereign function and a governmental operation being carried out in the interest of public welfare and safety. The complaint in this case places before the Court the fundamental question as to the alleged right of the defendants unilaterally to terminate the Krug-
16 Lewis agreement. A temporary restraining order and ultimately a preliminary injunction are necessary not only to prevent irreparable harm and great damage to the public interest pending the determination of that question, but also to protect the jurisdiction of the Court and to assure the effectiveness of its decision. If a temporary restraining order is not granted in this action, properly brought to obtain a declaratory judgment to settle the controversy prior to actual interference with rights and relationships, the final decision of

the Court may be rendered nugatory and fruitless even if plaintiff is finally successful.

Respectfully submitted.

TOM C. CLARK,
Attorney General of the United States.
By JOHN F. SONNETT
JOHN F. SONNETT,
Assistant Attorney General.

Attorneys for the United States of America
JOHN F. SONNETT,
Assistant Attorney General.
GEORGE MORRIS FAY,
United States Attorney, District of Columbia.
JOHN FORD BAECHER,
Special Assistant to the Attorney General.
FRANK HAYDEN,
Special Assistant to the Attorney General.
ELLIS LYONS,
Attorney, Department of Justice.
SAMUEL SLADE,
Attorney, Department of Justice.

13 In the District Court of the United States for the District of Columbia

Civil No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Temporary Restraining Order Against Defendants

Filed, Nov. 18, 1946. Charles E. Stewart, Clerk.

This action came on to be heard on the verified complaint of the United States of America, and the affidavits of J. A. Krug, Secretary of the Interior; Robert P. Patterson, Secretary of War; James Forrestal, Secretary of the Navy; J. D. Small, Administrator, Civilian Production Administration; G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission; Leland Olds, Chairman, Federal Power Commission; James A. Crabtree, Acting Surgeon General, United States Public Health Service; and J. M. Johnson, Director, Office of Defense Transportation, filed herein, and upon the plaintiff's application for a temporary restraining order against the defendants; and it appearing to the Court that the defendant, the United Mine Workers of America, has given to the Secretary of the Interior a notice dated November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement dated May 29, 1946, as of 12 o'clock p. m. midnight, November 20, 1946, and it further appearing that said agreement applies to the employment of members of said United Mine Workers of America serving in the bituminous coal mines now in the possession of the United States of

America acting by the Secretary of the Interior, and it further appearing that it is the announced practice of the members of the United Mine Workers of America to refuse to work in the mines while there is no contract in effect with the operator of the mines; and it
14 further appearing that if the purported notice of termination is permitted to remain in effect, the miners may walk out of the mines, and refuse to resume work, and that the resultant stoppage in bituminous coal production will cause great loss and irreparable damage to the plaintiff, and that such stoppage will directly interfere with governmental operations and sovereign functions, and will adversely affect the public interest and will seriously endanger the public welfare and safety, and it further appearing that the action of the defendants may deprive the Court of full and effective jurisdiction over the claim set forth in the complaint, and may impair, obstruct, or render fruitless, the Court's determination of this action;

NOW, THEREFORE, IT IS BY THE COURT this 18th day of November 1946,

ORDERED that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the
15 aforesaid notice or by issuing any notice of termination of agreement or through any other means or devices; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court;

AND IT IS FURTHER ORDERED that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

AND IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m.

/s/ T. ALAN GOLDSBOROUGH, *Justice.*

Signed at 12:50 p. m., November 18, 1946.

(Certified a True Copy by the Clerk of the Court.)

Personally served copy of the within on John L. Lewis. 11/18/46. /s/ W. Bruce Matthews, U. S. Marshal in and for the D. of C. By Charles I Mattingly. /s/ Deputy U. S. Marshal /md/.

District Court of the United States for the District of Columbia

No. 37,764 Civil Action

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSO., AND JOHN L. LEWIS, ETC., DEFENDANTS

I, CHARLES E. STEWART, Clerk of THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, do hereby certify the annexed to be a true and correct copy of the original summons as it appears of record in the Clerk's Office of said Court in the above-entitled cause.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 3rd day of December, 1946.

[SEAL]

CHARLES E. STEWART,
Clerk,
By ANNA M. THOMPSON,
Deputy Clerk.

SUMMONS IN A CIVIL ACTION

[D. C. Form No. 45 Rev.]

District Court of the United States for the District of Columbia,
Civil Division

Civil Action File No. 37,764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Summons

To the above named Defendants:

You are hereby summoned and required to serve upon TOM C. CLARK, plaintiff's attorney, whose address is Department of Justice, Washington, D. C., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[SEAL]

CHARLES E. STEWART,
Clerk of Court.
By ANNE W. LYDDANE,
Deputy Clerk.

Date: November 18, 1946.

NOTE.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

No. ——. District Court of the United States —— District of ——, —— Division. —— v. ——. Summons in Civil Action. Returnable not later than days after service.

———— ————,
Attorney for Plaintiff.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 18th day of November 1946, I received the within summons and complaint and served a copy of said summons and of the complaint by delivering a copy of said summons and complaint to the within named defendants; United Mine Workers of America, an Unincorporated Association, by personally serving John L. Lewis, President, 11/18/46; and John L. Lewis, personally, 11/18/46.

MARSHAL'S FEES

Travel ---------- $——
Service ---------- 2.00
———
———

W. BRUCE MATTHEWS,
United States Marshal,
By CHARLES I. MATTINGLY,
Deputy United States Marshal.

Subscribed and sworn to before me, a this day of 19 .

[SEAL] ———— ————

NOTE.—Affidavit required only if service is made by a person other than a United States Marshal or his deputy.

11 In the United States District Court for the District of Columbia

Civil No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

MICHAEL F. COLASANTO and CHARLES I. MATTINGLY, being first duly sworn, depose and say:

That they at all times herein mentioned were duly appointed and qualified and acting Deputy United States Marshals in and for the District of Columbia, and that on the 18th day of November, at 2:15 o'clock p. m., they personally served on John L. Lewis, individually and as President of the United Mine Workers of America, an unincorporated association, and on the United Mine Workers of America, an unincorporated association, by John L. Lewis, President, at their place of business, the United Mine Workers Building, 900 I Street NW., Washington, D. C., a certified copy of the Restraining Order issued

and signed by the Court in the above entitled cause at 12:30 o'clock p. m., November 18, 1946, a copy of a Memorandum of Law, Points and Authorities filed on behalf of the United States in support of the application for the temporary Restraining Order and for temporary injunctive relief, a copy of the affidavits in support of the prayer for the Restraining Order of J. A. Krug, Secretary of the Interior;
12 James Forrestal, Secretary of the Navy; Robert P. Patterson, Secretary of War; John D. Small, Administrator, Civilian Production Administration; G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission; Leland Olds, Chairman, Federal Power Commission; James A. Crabtree, Acting Surgeon General, Public Health Service; and J. N. Johnson, Director, Office of Defense Transportation; and a copy of the Complaint of the United States of America for Declaratory Judgment and Injunctive Relief, with Exhibits A–M, inclusive, attached thereto, all of which were filed in the above entitled cause of November 18, 1946; and that a copy of the Restraining Order so served by them on the defendants is attached hereto and made a part hereof.

CHARLES I. MATTINGLY. /s/
MICHAEL F. COLASANTO. /s/

Subscribed and sworn to before me this 21st day of November 1946.

MARY M. REPETTI, /s/
Notary Public in and for the District of Columbia.

My commission expires on the 1st day of December 1949.

13 In the District Court of the United States for the District of Columbia

Civil No. 37764

UNITED STATES OF AMERICA, PLAINTIFF
v.
UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Temporary restraining order against defendants

This action came on to be heard on the verified complaint of the United States of America, and the affidavits of J. A. Krug, Secretary of the Interior; Robert P. Patterson, Secretary of War; James Forrestal, Secretary of the Navy; J. D. Small, Administrator, Civilian Production Administration; G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission; Leland Olds, Chairman, Federal Power Commission; James A. Crabtree, Acting Surgeon General, United States Public Health Service; and J. M. Johnson, Director, Office of Defense Transportation, filed herein, and upon the plaintiff's application for a temporary restraining order against the defendants; and it appearing to the Court that the defendant the United Mine Workers of America has given to the Secretary of the Interior a notice dated November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement dated May 29, 1946, as

of 12 o'clock p. m. midnight, November 20, 1946, and it further appearing that said agreement applies to the employment of members of said United Mine Workers of America serving in the bituminous coal mines now in the possession of the United States of America acting by the Secretary of the Interior, and it further appearing that it is the announced practice of the members of the United Mine Workers of America to refuse to work in the mines while there is no contract in effect with the operator of the mines; and it further appearing
14 that if the purported notice of termination is permitted to remain in effect, the miners may walk out of the mines, and refuse to resume work, and that the resultant stoppage in bituminous coal production will cause great loss and irreparable damage to the plaintiff, and that such stoppage will directly interfere with governmental operations and sovereign functions, and will adversely affect great public interest, and will seriously endanger the public welfare and safety, and it further appearing that the action of the defendants may deprive the Court of full and effective jurisdiction over the claim set forth in the complaint, and may impair, obstruct, or render fruitless, the Court's determination of this action;

NOW, THEREFORE, IT IS BY THE COURT this 18th day of November, 1946,

ORDERED that the defendants, and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow-down, walk-out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement
15 or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court.

15 AND IT IS FURTHER ORDERED that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

AND IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m.

/s/ T. ALAN GOLDSBOROUGH,
Justice.

Signed at 12:50 p. m., November 18, 1946.
(Certified a True Copy by the Clerk of the Court.)

1 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Petition for rule to show cause

To the Honorable T. Alan Goldsborough, Justice of the United States District Court for the District of Columbia:

Comes now the complainant, the United States of America, by Tom C. Clark, its Attorney General, and files this petition herein and shows:

1. That on the 18th day of November 1946, the said United States of America filed in this court a complaint in which the said United States of America was plaintiff and the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, were defendants, praying that a preliminary injunction and a temporary restraining order issue against said defendants and that said court on November 18, 1946, issued a temporary restraining order which is still in full force and effect and has been at all times since that date.

2. That a certified copy of said restraining order was duly published and served upon each and all of the above-named defendants in said action in the District of Columbia by Acting Deputy
2 United States Marshals Charles I. Mattingly and Michael F. Colasanto, all prior to the date of the commission of the violation of the temporary restraining order hereinafter referred to, as will more fully appear from the return of the United States Marshals of this court on file in said action, reference being made thereto and to all papers, files, and proceedings in said action.

3. Your petitioner further shows the court and alleges upon information and belief that since the issuance and service of said restraining order aforesaid, and with full knowledge thereof and in defiance of the terms of said order, that said United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, have wilfully, wrongfully, and deliberately disobeyed and violated the said temporary restraining order, all of which more fully appears from the affidavit of N. H. Collisson which is hereto attached and made a part hereof; that this application is made for the purpose of securing a rule against the parties above named to show cause why they should not be punished as and for a contempt of this Honorable Court and for such further orders in the premises as are just and proper.

Wherefore, your petitioner prays that this court issue a rule as submitted herewith against the said United Mine Workers of Amer-

ica, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America.

Dated November 21, 1946.

TOM C. CLARK,
Attorney General.

By /s/ JOHN F. SONNETT,
Assistant Attorney General.

3 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF, *v.* UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Affidavit of Captain N. H. Collisson, U. S. N. R.

N. H. COLLISSON, being duly sworn, deposes and says:

1. I am now and have been since October 1, 1946, Coal Mines Administrator acting under authority delegated by the Secretary of the Interior of the United States pursuant to Executive Order No. 9728 dated May 21, 1946. In this capacity I am charged with the operation and administration of the bituminous coal mines in the possession of the United States.

2. On November 18, 1946, the United States of America commenced a civil action in the United States District Court for the District of Columbia by the filing of a verified complaint against the above-named defendants, praying for a declaratory judgment and for preventive relief by way of a temporary restraining order and a preliminary injunction. On November 18, 1946, the Court issued a temporary restraining order against the defendants in said case. Copies of said verified complaint, affidavits in support of the issuance of a temporary restraining order and said temporary restraining order are attached hereto and made a part hereof.

4 3. On information and belief, a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits, were served on the defendants at 2:15 p. m., on November 18, 1946, as shown by the return of the United States Marshal filed in this action and the annexed affidavit of service.

4. On information and belief at no time after the service of the aforesaid temporary restraining order has the defendant Lewis or the defendant, United Mine Workers of America, withdrawn the notice of alleged termination of the Krug-Lewis agreement heretofore given by said defendants to the Secretary of Interior dated November 15, 1946.

5. On information and belief, on or about November 18, 1946, there commenced at said coal mines a gradual walk-out, strike, cessation of

and refusal to work by the members of defendant Union, which increased daily until 12 o'clock midnight of November 20, 1946. Since that hour and up to 1:30 p. m., November 21, 1946, there has occurred a walk-out, strike, cessation of and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government which mines have produced in the past during Government possession of the mines, and prior to November 18, 1946, approximately 87% of the bituminous coal production of the nation.

6. On information and belief, said defendants have violated the temporary restraining order issued by this Court on November 18, 1946, in said action, and are in contempt of this Court.

(1) In that, since 2:15 p. m. on November 18, 1946, and at all times since and up to 1:30 p. m. today, November 21, 1946, the defendants and each of them have permitted to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946.

(2) By breaching their obligation, under the Krug-Lewis agreement, to continue said agreement in effect during the period of Government possession and operation of said mines.

5 (c) By instigating, inducing, and encouraging the workers at said mines to interfere, by strike, slow-down, walk-out, and cessation of work, with the operation of said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement.

(d) By permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement, thereby completing the calling of a strike by said defendants and completing the instigation, inducement, and encouragement by said defendants, of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walk-out and cessation of work, with the operation of said mines.

(e) By failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant union employed at said mines that said notice of November 15, 1946, was withdrawn, and by failing to notify said members of defendant Union that there is in force and in effect an agreement or contract between the defendant Union and the United States of America, that is, the so-called Krug-Lewis Agreement, the said defendants instigated, induced, and encouraged the workers at said mines to interfere by strike, slow-down, walk-out, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and with the performance of other governmental functions.

6 (f) By reason of the violation of the Temporary Restraining order by said defendants as set forth above, the said defendants have interfered with this Court's jurisdiction.

[SEAL] /s/ CAPTAIN N. H. COLLISSON, U. S. N. R.

Subscribed and sworn to before me this 21st day of November 1946.

MARY M. REPETTI /s/

WASHINGTON, D. C.

My commission expires Dec. 1, 1949.

A2 In the District Court of the United States for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, ET AL., DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk. 37764

Temporary Restraining Order Against Defendants

This action came on to be heard on the verified complaint of the United States of America, and the affidavits of J. A. Krug, Secretary of the Interior; Robert P. Patterson, Secretary of War; James Forrestal, Secretary of the Navy; J. D. Small, Administrator, Civilian Production Administration; G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission; Leland Olds, Chairman, Federal Power Commission; James A. Crabtree, Acting Surgeon General, United States Public Health Service; and J. M. Johnson, Director, Office of Defense Transportation, filed herein, and upon the plaintiff's application for a temporary restraining order against the defendants; and it appearing to the Court that the defendant the United Mine Workers of America has given to the Secretary of the Interior a notice dated November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement dated May 29, 1946, as of 12 o'clock p.m. midnight, November 20, 1946, and it further appearing that said agreement applies to the employment of members of said United Mine Workers of America serving in the bituminous coal mines now in the possession of the United States of America acting by the Secretary of the Interior, and it further appearing that it is the announced practice of the members of the United Mine Workers of America to refuse to work in the mines while there is no contract in effect with the operator of the mines; and it further

A3 appearing that if the purported notice of termination is permitted to remain in effect, the miners may walk out of the mines, and refuse to resume work, and that the resultant stoppage in bituminous coal production will cause great loss and irreparable damage to the plaintiff, and that such stoppage will directly interfere with governmental operations and sovereign functions, and will adversely affect the public interest, and will seriously endanger the public welfare and safety, and it further appearing that the action of the defendants may deprive the Court of full and effective jurisdiction over the claim set forth in the complaint, and may impair, obstruct, or render fruitless, the Court's determination of this action;

NOW, THEREFORE, IT IS BY THE COURT this 18th day of November, 1946,

ORDERED that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be termi-

nated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agree-
A4 ment or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court;

AND IT IS FURTHER ORDERED that this restraining order shall expire at 3 o'clock p. m. on November 27th, 1946, unless before such time the order for good cause shown is extended, or unless the defendants consent that it may be extended for a longer period;

AND IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunction be set down for hearing on November 27th, 1946, at 10:00 o'clock a. m.

J. ALAN GOLDSBOROUGH,
Justice.

Signed at 12:50 p. m., November 18, 1946.
A True Copy:
Test:
[SEAL] CHARLES E. STEWART, *Clerk.*
By JOHN J. DONOVAN /s/, *Deputy Clerk.*

Personally served copy of the within on John L. Lewis, 11/18/46. /s/ W. Bruce Matthews, U. S. Marshal in and for the D. of C. By Charles I. Mattingly /s/, Deputy U. S. Marshal /md/.

9 In the District Court of the United States for the District of Columbia

C. A. No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Points and authorities in support of petition for rule to show cause

The power of the Court to punish for contempt is well set forth in *Kelton* v. *United States*, 294 Fed. 491 (C. C. A. 3, 1923), certiorari denied 264 U. S. 590, in which the court stated (at p. 493):

"The power of a court to make an order carries with it the equal power to punish for disobedience of that order, and the inquiry as

to the question of disobedience has been, from time immemorial, the special function of the court. In re Debs, 158 U. S. 564, 594, 15 Sup. Ct. 900, 39 L. Ed. 1092. In the case of Ex parte Robinson, 86 U. S. (19 Wall.) 505, 510 (22 L. Ed. 205), the Supreme Court said: 'The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power.'

"Moreover, the power of courts to punish for contempts has been conferred and defined by the Act of Congress under which this proceeding was instituted (supra), and this power by the terms of the statute extends to— * * * disobedience or resistance * * * by any party, juror, witness, or other person to any lawful writ, process, order, rule, decree, or command of the said courts.' Comp. St. § 1245."

10 Respectfully submitted.

TOM C. CLARK,
Attorney General of the United States.
By /s/ JOHN F. SONNETT,
Assistant Attorney General.

11 In the United States District Court for the District of Columbia

Civil No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

MICHAEL F. COLASANTO and CHARLES I. MATTINGLY, being first duly sworn, depose and say:

That they at all times herein mentioned were duly appointed and qualified and acting Deputy United States Marshals in and for the District of Columbia and that on the 18th day of November at 2:15 o'clock p. m. they personally served on John L. Lewis individually, and as President of the United Mine Workers of America, an unincorporated association, and on the United Mine Workers of America, an unincorporated association, by John L. Lewis, President, at their place of business, the United Mine Workers Building. 900 I Street NW., Washington, D. C., a certified copy of the Restraining Order issued and signed by the Court in the above-entitled cause at 12:50 o'clock p. m., November 18, 1946, a copy of a Memorandum of Law, Points, and Authorities filed on behalf of the United States in support of the application for the temporary Restraining Order and for temporary injunctive relief, a copy of the affidavits in support of the prayer for the Restraining Order of J. A. Krug, Secretary of the Interior,

12 James Forrestal, Secretary of the Navy, Robert P. Patterson, Secretary of War, John D. Small, Administrator, Civilian Production Administration, G. H. Helmbold, Managing Director, Ship Operations, United States Maritime Commission, Leland Olds, Chairman, Federal Power Commission, James A. Crabtree, Acting Surgeon General, Public Health Service, and J. N. Johnson, Director, Office of Defense Transportation, and a copy of the Complaint of the United States of America for Declaratory Judgment and Injunctive Relief with Exhibits A-M, inclusive, attached thereto, all of which were filed in the above entitled cause of November 18, 1946; and that a copy of the Restraining Order so served by them on the defendants is attached hereto and made a part hereof.

CHARLES I. MATTINGLY /s/.
MICHAEL F. COLASANTO /s/.

Subscribed and sworn to before me this 21st day of November 1946.

MARY M. REPETTI /s/.
Notary Public in and for the District of Columbia.

My commission expires on the 1st day of December 1949.

7 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 21, 1946. Charles E. Stewart, Clerk.

Rule to Show Cause

On motion of Tom C. Clark, Attorney General of the United States, by John F. Sonnett, Assistant Attorney General of the United States, and on the filing of the petition of the United States of America, supported by the affidavit of Captain N. H. Collisson, U. S. N. R., Coal Mines Administrator, Department of the Interior, charging contempt of court committed by the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America,

IT IS HEREBY ORDERED that the said United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, and each of them, be and appear before this court on the 25th day

of November 1946, at ten o'clock in the forenoon of that day, to show cause if any they have, why they should not be punished as and for a contempt of this court,

IT IS FURTHER ORDERED, that in the event that upon or by the return or returns of said United Mine Workers of America, an
8 unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, it shall be found that the alleged contempt be not sufficiently purged, a trial shall be and is hereby directed to be held on the 27th day of November, 1946, at 10:00 o'clock in the forenoon of that day, at a term of the District Court of the United States for the District of Columbia, to be held in Room 319, The Municipal Court Building, 5th and E Streets NW, District of Columbia, or at such other day as shall be determined by this court.

IT IS FURTHER ORDERED, that the accused, and each of them, shall, unless waived by them, be tried upon said charges of contempt by the court with an advisory jury to be empanelled by this court.

IT IS FURTHER ORDERED, that a certified copy of this order, together with a copy of said petition and a copy of the affidavit of N. H. Collisson in support thereof, be served by the United States Marshal for the District of Columbia, or one of his deputies, upon each of the above-named parties and that due return of said service be filed by the Marshal herein.

Dated November 21, 1946.

T. ALAN GOLDSBOROUGH /s/,
Justice.

Personally served copy of the within on United Mine Workers of America by serving John L. Lewis, President, 11/22/46. W. Bruce Matthews, U. S. Marshal in and for the D. of C. By H. W. McCauley /s/, Deputy U. S. Marshal /B/.

Personally served copy of the within on John L. Lewis, 11/22/46 /s/. W. Bruce Matthews, U. S. Marshal in and for the D. of C. by H. W. McCauley /s/, Deputy U. S. Marshal /B/.

1 In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 25, 1946. Charles E. Stewart, Clerk.

Brief concerning issues arising on the return to the rule to show cause

1 In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Brief concerning issues arising on the return to the rule to show cause

The Rule to Show Cause issued by this Court on November 21, 1946, against the above-named defendants, provides in part:

> "IT IS FURTHER ORDERED, that in the event that upon or by the return or returns of said United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, it shall be found that the alleged contempt be not sufficiently purged, a trial shall be and is hereby directed to be held on the 27th day of November 1946, at 10:00 o'clock in the forenoon of that day, at a term of the District Court of the United States for the District of Columbia, to be held in Room 319, The Municipal Court Building, 5th and E Streets NW., District of Columbia, or at such other day as shall be determined by this court."

THE ISSUES

It is plain from the terms of the above Rule to Show Cause, and under settled law, that only two issues are before the Court on the return to the Rule, namely, (1) whether a contempt is *alleged* and (2) if so, whether such *alleged* contempt has been sufficiently purged.

In the event that the Court finds upon the return that a contempt is alleged and has not been sufficiently purged, a trial
2 should be had in accordance with the Court's rule providing:

> "IT IS FURTHER ORDERED, that the accused, and each of them, shall, unless waived by them, be tried upon said charges of contempt by the court with an advisory jury to be empanelled by this court."

I

A CONTEMPT IS ALLEGED

The Petition for a Rule to Show Cause and the affidavit of Captain N. H. Collisson, USNR, in support thereof allege

(1) that service of the temporary restraining order issued by this Court 12:50 p. m. on November 18 was made on the defendants at 2:15 p. m. of that day, and

(2) that thereafter the defendants willfully, wrongfully, and deliberately disobeyed and violated the temporary restraining order in at least six respects, as follows:

> "(1) In that, since 2:15 p. m. on November 18, 1946, and at all times since and up to 1:30 p. m. today, November 21, 1946, the defendants and each of them have permitted to continue in effect

the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946.

"(2) By breaching their obligation, under the Krug-Lewis agreement, to continue said agreement in effect during the period of Government possession and operation of said mines.

"(c) By instigating, inducing, and encouraging the workers at said mines to interfere, by strike, slow-down, walk-out and cessation of work, with the operation of said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement.

"(d) By permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement, thereby completing the calling of a strike by said defendants and completing the instigation, inducement, and encouragement by said defendants, of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walk-out, and cessation of work, with the operation of said mines.

3 "(e) By failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant Union employed at said mines that said notice of November 15, 1946, was withdrawn, and by failing to notify said members of defendant Union that there is in force and in effect an agreement or contract between the defendant Union and the United States of America, that is, the so-called Krug-Lewis Agreement, the said defendants instigated, induced, and encouraged the workers at said mines to interfere by strike, slow-down, walkout, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and with the performance of other governmental functions.

"(f) By reason of the violation of the Temporary Restraining order by said defendants as set forth above, the said defendants have interfered with this Court's jurisdiction."

There is clearly alleged contempt of the judicial power of this Court, which under Article III of the Constitution "shall extend to all Cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority * * *." That power was exercised in this case when the court issued a restraining order designed to protect its power judicially to determine the substantial controversy between the parties. And, as the cases have clearly recognized, it is essential to the discharge of the judicial power that a temporary restraining order be complied with unless and until it is vacated by the court. Any other rule would permit the person restrained, rather than the court, to exercise the judicial power provided for by the Constitution.

For, as Mr. Chief Justice Marshall pointed out in *Marbury* v. *Madison*, 5 U. S. 137, 176 (1803)—

"It is, emphatically, the province and duty of the judicial department, to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule."

4 This Court's power to adjudicate the defendants in contempt for their failure to comply with the restraining order is not affected by any determination of the question whether the Norris-LaGuardia Act applies to this case. If the defendants question the Court's jurisdiction because they erroneously contend that that Act is applicable, such an objection would at best be only an arguable contention which would pose an issue for decision by the Court. Pending a decision of that very issue, the Court was and is clearly empowered to protect its jurisdiction to pass on the question. In other words, regardless of what contentions the defendants may make, and regardless of what final decisions that may be made on the respective contentions of the parties, the Court had power and jurisdiction to issue the temporary restraining order, and has corresponding power and jurisdiction to compel enforcement and to punish a party who wilfully fails and refuses to comply with such an order.

Indeed, this rule of law is so fundamental that it has been seriously questioned but a few times, and in those few instances it has been expressly recognized as applicable to cases such as this. *United States* v. *Shipp*, 203 U. S. 563 (1906); *Carter* v. *United States*, 135 F. (2d) 858 (C. C. A. 5), 1943.

In *United States* v. *Shipp*, an original information for contempt of the Supreme Court of the United States was involved. Johnson, a Negro, had previously been sentenced to death by a Tennessee State Court for rape. He had petitioned to the United States Circuit Court for habeas corpus asserting that negroes had been excluded from the grand and petit juries and that he had been deterred from making proper presentation of this and other defenses at the trial and from taking an appeal through fear of mob violence. The Circuit Court had denied the petition after hearing. An appeal to the Su-

5 preme Court had been allowed and that court had ordered that all proceedings against Johnson be stayed pending the appeal. Shipp, the County Sheriff, had been notified of this order by telegraph and full newspaper accounts. The information for contempt alleged, however, that he had left the jail unguarded except for one jailer, and that he and other defendants had participated in breaking into the jail, taking Johnson out and hanging him.

Shipp and other appellants, on the return to the order to show cause, asserted that the Court was without jurisdiction to punish the contempt because it had jurisdiction of the appeal only if a constitutional question was involved, and the evidence before the Circuit Court, if not the face of the petition, showed that the alleged constitutional question was a pretense. The case was, on motion of the Solicitor General, set down for hearing on preliminary questions of law (214 U. S. at 455). After argument the Court, in a unanimous opinion by Mr. Justice Holmes, 203 U. S. 563, rejected the contention as to want of jurisdiction and ordered that the contempt be tried. Justice Holmes said:

> "We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer*, 124 U. S. 200; *Ex parte Fisk*, 113 U. S. 713; *Ex parte Rowland*, 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court

had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan*, 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. § 766;
6 act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it." (P. 573.)

Similarly, in *Carter* v. *United States*, the Circuit Court of Appeals for the Fifth Circuit sustained a contempt judgment made by a district court for violation of a temporary restraining order which had been issued by it in a case where the Circuit Court of Appeals had held that the district court had no jurisdiction over the basic action in connection with which the temporary restraining order was issued.

The *Carter* case arose as follows: George and Paul Coumanis, employers, petitioned in a Federal district court for an injunction against two labor unions and certain individuals. Without notice to the defendants, the court made findings in accordance with the requirements of the Norris-LaGuardia Act and issued a *restraining order* setting a time for hearing a week later. At that hearing, defendants pleaded that there was no Federal jurisdiction but the court, on an amended complaint, found that it had jurisdiction and issued an injunction. On appeal from that injunction, the Circuit Court of Appeals for the Fifth Circuit held (*Brown* v. *Coumanis*, 135 F. (2d) 163 (1943)) that Federal jurisdiction was wanting and reversed the district court.

Three days after issuance of the temporary *restraining order*, and prior to any hearing in the district court case, the plaintiff had initiated contempt proceedings against Carter, one of the defendants. Carter had moved to dismiss the proceedings because of the lack of Federal jurisdiction to issue an injunction and also had an-
7 swered. The court, speaking through Judge Sibley, affirmed the judgment of contempt. Addressing itself to the contention that the restraining order was beyond the jurisdiction of the court and therefore could not form a basis for contempt proceedings, the court said:

"It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. *Treines* v. *Sunshine Mining Co.*, 308 U. S. 66, 60 S. Ct. 44, 84 L. Ed. 85; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close

question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See *Binderup* v. *Pathe Exchange*, 263 U. S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308" (P. 861).

The Court discussed *United States* v. *Shipp*, and stated that that case applied directly to the action of the District Court, pointing out that the District Court

> "had a new question of jurisdiction to solve. It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101–115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exercise of its equity powers could make, pending a hearing of a doubtful question of jurisdiction. The question of jurisdiction was not frivolous. It had never before been decided." (P. 862).

8

II

THE ALLEGED CONTEMPT HAS NOT BEEN PURGED

As of the time of the preparation of this brief, we are informed and believe that defendants have not purged themselves of the alleged contempt. The temporary restraining order plainly required that the defendants effectively rescind or withdraw the notice given by defendant Lewis to the Secretary of the Interior, dated November 15, 1946, purporting to terminate the Krug-Lewis Agreement. So far as the Government is aware, the defendants have not taken this action.

Failing to act or merely remaining at rest can provide no defense for the disobedience of an order of the Court which requires defendants to act. Equity courts generally have power to issue mandatory injunctions. The power of this Court to issue a temporary restraining order such as that in this case is clear under well settled authority.

A case applicable to the instant one is that of *Toledo, etc. Railway Co.* v. *Pennsylvania Co., et al.*, 54 Fed. 730 (C. C. Ohio, 1893). In that case the Toledo Railway brought an action in equity against the Pennsylvania Company and others to enjoin them from refusing to handle railroad cars and freight which had been hauled over the complainant's road. The reason for the suit was that the complainant had a labor dispute with its employees, members of the Brotherhood of Locomotive Engineers. As a result of said dispute, complainant's employees went out on strike on March 7. One Arthur, the Chief Executive of the Brotherhood of Locomotive Engineers, declared on March 7 that this was a legal strike. This declaration, under the rules of the Brotherhood, was, in substance, an order to all other members of the Brotherhood not to haul freight issuing from the struck railroad.

9 After the issuance of the aforesaid strike notice, negotiations were resumed and on March 11 the strike notice was suspended. However, these negotiations broke down, and on March 16 Arthur sent out to members of his union a notice that the efforts to negotiate had failed and that members of the union should comply with the rules of the Brotherhood.

On the following day, March 17, the complainant asked for a temporary restrainingg order ex parte against Arthur, in which he was directed "to rescind any order he might have promulgated to engineers on connecting lines to refuse to handle complainant's freight."

This temporary ex parte restraining order was signed by Judge Taft, later Chief Justice of the United States, and was obeyed by Arthur.

On the later motion for the injunction to restrain Arthur "from issuing, promulgating, or continuing in force" the strike notice, the Circuit Court ruled that the court had adequate power and authority to issue the injunction.

In his opinion Judge Taft pointed out that the nature of the case was such that an injunction requiring affirmative action was necessary to keep the status quo and therefore both the temporary restraining order and the preliminary injunction could properly compel Arthur to rescind his order. He said, 54 Fed. at 741, 745:

> "The office of a preliminary injunction is to preserve the status quo until, upon final hearing, the court may grant full relief. Generally this can be accomplished by an injunction prohibitory in form, but it sometimes happens that the status quo is a condition not of rest but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant, which he appeals to a court of equity to protect him from. In such a case courts of equity issue mandatory writs before the case is heard on its merits."
>
> 10 "It is the duty of the court promptly to prevent, at all hazards, the probably obstruction to its main injunction, by auxiliary injunctive process, and if such obstruction has actually been interposed, to remove it by the same means. On this ground the court was fully justified in restraining Arthur, as it did, from continuing in force any order he might have issued in conflict with the previous order of the court. This was mandatory, but it was necessary to secure the enforcement of the court's previous order, and to preserve the status quo. Had the order of Arthur, then in force, been allowed to continue, future equitable relief would have been unavailing. A rescission of the order could work injury to no one. Mandatory injunctions issue under such circumstances. Mr. High states the rule as follows, in his work on Injunctions (section 2):
>
> "'And when there is a willful and unlawful invasion of plaintiff's right, against his protest and remonstrance, the injury being a continuing one, a mandatory injunction may issue in the first instance.'"

The aforesaid case establishes conclusively that this court had full power to restrain defendants from permitting the notice of November 15 to continue in effect. The restraining order in this case is in substantially the same language as the court used in the *Toledo* case

and was an order to defendants affirmatively to rescind the notice of termination.

The ruling of Judge Taft in the *Toledo* case has been cited with approval by the Supreme Court. In the case of *Peoria Railway Co.* v. *United States*, 263 U. S. 538, Justice Brandeis, writing for the court, relied on the authority of the *Toledo* case in pointing out that the courts could compel the performance of a duty by a mandatory injunction. See 263 U. S. at 535:

> "The switching order here in question compels performance of the primary duty to receive and transport cars of a connecting carrier. That courts may enforce such duties by mandatory injunction, including a preliminary restraining order, has long been recognized."

Also directly in point is *Vaughan* v. *Winston*, 83 F. (2d) 370 (C. C. A. 10th, 1936). In that case the plaintiff, Winston, had
11 a contract with the Ohio Textbook Commission to furnish books. Defendant Vaughan, State Superintendent of Public Instruction, was of the opinion that this contract was illegal and therefore had refused to notify the school authorities to use plaintiff's books. In addition, prior to the institution of the action by Winston, Vaughan had written a letter to various school authorities in which he had stated that in his opinion the contract was illegal and that the school authorities were not bound to use plaintiff's books.

The trial court, as part of the relief, ordered Vaughan to send out another letter recalling his prior one. The Circuit Court of Appeals affirmed this part of the order, stating as follows:

> "As to that part of the order directing him to undo the damage done as far as it then could be by sending out a letter recalling the false and stating the true: It must be remembered that the wrong was a continuing one and irreparable. Every day patrons were buying unauthorized texts instead of appellee's. They would continue so to do until advised to the contrary by those in charge of the schools. The contract expressly absolved the state from financial liability thereon. Winston could not as a practical matter recoup the losses it was sustaining day by day either from the patrons who purchased unauthorized texts, or from Vaughan. The case presented is one where a continuing wrong can be stopped only by an affirmative act. In order to restore the status as it existed before Vaughan invaded the rights of appellee, affirmative action must be taken.
>
> "The power of equity, in an injunctive action, to issue an order requiring affirmative action is frequently and properly exercised. In *Jones* v. *Securities and Exchange Comm.*, 56 S. Ct. 654, 80 L. Ed. — the Supreme Court refers with approval to many cases which have required defendants to take affirmative action to restore the status, even though it required the demolition of a building. See, too, *Ickes* v. *Virginia-Colorado Development Corporation*, 295 U. S. 639, 55 S. Ct. 888, 79 L. Ed. 1627. Our own court has upon at least three occasions approved injunctive orders which required affirmative action by defendants. * * * The order of the trial court is couched in the form of a double negative, a circumstance to which we attach no importance. If the court is without

power in a particular case to require the doing of an affirmative act, it does not acquire that power by the form of words in which the command is couched.

12 "The order requiring Vaughan to send out letters to correct the untrue statements made in his earlier letters is justified on several distinct grounds: (1) It is the only appropriate means of rectifying the wrong done. (2) It was necessary to restore the status existing before Vaughan invaded appellee's rights. (3) Equity having jurisdiction to issue the prohibitory injunction, it had power to do all other things necessary to accomplish complete justice, for equity does not do things piecemeal." (See 83 F. (2d) 374.)

The rule permitting courts to issue temporary restraining orders *pendente lite* in mandatory form is therefore well settled and, in addition to the cases above cited, has been applied in a variety of situations. See e. g. *Trautwein* v. *Moreno Mutual Irrigation Co., et al.*, 22 F. (2d) 374 (C. C. A. 9th, 1927); *Wiemer* v. *Louisville Water Co.*, 130 Fed. 251 (W. D. Ky., 1903); Vol. I, High on Injunctions, 1905, section 5 (a).

Plainly, until now, defendants have failed to purge themselves of the alleged contempt since they have failed and refused to take the action required by the temporary restraining order issued by this Court.

CONCLUSION

In view of the foregoing, it is requested that the court order a trial on the alleged contempt to be held at 10:00 A. M. on November 27, 1946, as directed in the rule to show cause.

Respectfully submitted.

TOM C. CLARK,
Attorney General.

By John F. Sonnett,
JOHN F. SONNETT,
Assistant Attorney General.

JOHN F. SONNETT,
Assistant Attorney General.
GEORGE MORRIS FAY,
United States Attorney, District of Columbia.
JOHN FORD BAECHER,
Special Assistant to the Attorney General.
JOSEPH M. FRIEDMAN,
Special Assistant to the Attorney General.
J. FRANCIS HAYDEN,
Special Assistant to the Attorney General.
ROBERT L. WERNER,
Special Assistant to the Attorney General.

1 In the District Court of the United States
for the District of Columbia

Civil Action No. 37764

Filed Nov. 26, 1946. Charles E. Stewart, Clerk.

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Motion to discharge and vacate rule to show cause

Now come the defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, by their Counsel, and move the Court to discharge and vacate the Rule to Show Cause heretofore, on the 21st day of November 1946, entered and issued herein the following reasons:

1

The Temporary Restraining Order is void in that this case involves and grows out of a labor dispute. Under the provisions of the Norris-LaGuardia Act (47 Stat. 70), and the provisions of Section 20 of the Clayton Act (38 U. S. Stat. C. 323, 730), this Honorable Court is without jurisdiction over the subject-matter of this cause.

2

Equity acts only where there is no plain, adequate, and complete remedy at law. The allegations of the Petition for the Rule purport to show a violation of the War Labor Disputes Act—a serious offense—in which field there is no place for equity intervention.

3

Observance of all the strict rules of criminal procedure is required to establish criminal contempt. It is apparent that the alleged facts set out in the unverified Petition and in the affidavit of Captain Collisson, filed in support of the Rule, are based wholly upon hearsay, information and belief and are not sufficient to sustain the Rule to Show Cause.

4

The object of the Petition for the Rule is necessarily punitive and not compensatory. Accordingly, it being for criminal contempt, the Petition should have been presented as an independent proceeding and not as supplemental to the original cause.

5

The Temporary Restraining Order is beyond the jurisdiction of this Honorable Court and therefore void because it contravenes the First, Fifth, and Thirteenth Amendments to the Constitution of the United States.

Wherefore, Defendants respectfully request this Honorable Court to discharge and vacate the Rule to Show Cause.

/s/ WELLY K. HOPKINS,
900 15th St. NW.
/s/ EDMUND BURKE,
/s/ T. C. TOWNSEND,
/s/ HARRISON COMBS,
900 15th St. NW.

Counsel for:
UNITED MINE WORKERS OF AMERICA.
JOHN L. LEWIS, *Individually*,
JOHN L. LEWIS,
President, United Mine Workers of America.

Of Counsel:
/s/ JOSEPH A. PADWAY,
/s/ HENRY KAISER,
/s/ JAMES A. GLENN.

In the District Court of the United States
for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed, Nov. 26, 1946. Charles E. Stewart, Clerk.

Notice of attachment of statement of points and authorities in support of defendants' motion to discharge and vacate rule to show cause

Attached hereto in support of Motion to Discharge and Vacate Rule to Show Cause is a memorandum of points and authorities.

/s/ Welly K. Hopkins,
WELLY K. HOPKINS,
900 15th St. NW.
/s/ Edmund Burke,
EDMUND BURKE,
/s/ T. C. Townsend,
T. C. TOWNSEND,
/s/ Harrison Combs,
HARRISON COMBS,
900 15th St. NW.

Counsel for:
UNITED MINE WORKERS OF AMERICA.
JOHN L. LEWIS, *Individually*,
JOHN L. LEWIS,
President, United Mine Workers of America.

In the District Court of the United States
for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed, Nov. 26, 1946. Charles E. Stewart, Clerk.

Points and authorities in support of motion to discharge and vacate

1

This case involves and grows out of a labor dispute. Norris LaGuardia Act (47 Stat. 70). (*Obergfell* v. *Green*, 121 Fed. 2d 46; *United States* v. *American Federation of Musicians*, 318 U. S. 741; *United States* v. *Weirton Steel Co.*, 7 Fed. Sup. 255; *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91; *Lauf* v. *Shinner*, 303 U. S. 325; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *United States* v. *Hutchinson*, 312 U. S. 219.) Accordingly, the court is without jurisdiction over the subject matter and its temporary restraining order may be disregarded without liability to process for contempt. (*Ex parte Rowland*, 104 U. S. 604, 26 L. Ed. 861; *Ex parte Risk*, 5 S. Ct. 724, 726, 113 U. S. 713, 28 L. Ed. 1117; *In re Sawyer*, 8 S. Ct. 482, 493, 124 U. S. 200, 31 L. Ed. 402.)

2

2

Equity will not enjoin a crime. (*People* v. *Prouty*, 262 Ill. 218, L. 104 N. E. 387; *Ex Parte Sawyer*, 124 U. S. 200; *Ex parte Jackson*, 96 U. S. 727; *World's Columbian Exposition* v. *U. S.*, 56 Fed. Rep. 654.)

3

This is an action for criminal contempt because no private rights are sought to be vindicated. Accordingly, the observance of all rules of criminal procedure is required. (*Gompers* v. *Buckstove and Range Company*, 221 U. S. 418; *Federal Trade Commission* v. *Abe McLean & Sons*, 94 Fed. 2d 802; *Michaelson* v. *United States Ex Rel. Chicago, St. Paul Minneapolis, Omaha Railroad Co.*, 266 U. S. 42.)

4

In an action for criminal contempt the proceeding must be independent and separate, not ancillary. (*Federal Trade Commission* v. *Abe McLean & Sons, supra; Merchants Stock & Grain Company* v. *Board of Trade of the City of Chicago*, 201 Fed. 20; *Michaelson* v. *United States, supra.* See also Section 107–c, Title 29.)

5

A restraining order which deprives persons of constitutional rights is void ab initio (*Gompers* v. *Buckstove and Range Company*, *supra*). The order in the instant case deprives defendants of the right to free speech, the right to peaceful assembly, the right to petition for the adjustment of grievances, the right to liberty and the right to
3 be free from involuntary servitude. (*Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; *Hague* v. *C. I. O.*, 307 U. S. 496; *American Federation of Labor* v. *Swing*, 312 U. S. 321; *Patterson* v. *Colorado*, 205 U. S. 454; *Stapleton* v. *Mitchell*, 60 F. Supp. 61; *Carpenters' Union* v. *Citizens' Committee*, 333 Ill. 225; *Bailey* v. *Alabama*, 219 U. S. 219; *Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1; *Henderson* v. *Coleman*, 7 Sou. 2d. 117; *Snyder* v. *Milwaukee*, 308 U. S. 147; *Republic Aviation Corp.* v. *National Labor Relations Board*, 65 S. Ct. 982, p. 987 footnote.)

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 26. Charles E. Stewart, Clerk.

Service of Motion and Points of Authority herein made by delivery of two copies to the office of the Plaintiff's attorney herein at 26 November 1946.

Two copies received 3:05 p. m., November 26, 1946.

TOM C. CLARK,
Atty. Gen. of the U. S., Atty. for the United States.
By R. L. WERNER,
Special Ass't. to the Atty. Gen.

1 In the District Court of the United States for the District of Columbia

Civil No. 37764

Filed Nov. 27, 1946. Charles E. Stewart, Clerk.

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA ET AL., DEFENDANTS

Extension of temporary restraining order against defendants

This cause having come on to be heard on November 27, 1946, on plaintiff's motion and prayer for a preliminary injunction, and it appearing to the Court that the hearing will not be completed until after 3 o'clock p. m. on November 27, 1946, the time fixed for the expiration of the temporary restraining order heretofore issued by

the Court in this cause on November 18, 1946, and it further appearing to the Court that the reasons for the issuance of said temporary restraining order continue to exist and that therefore an extension of said temporary restraining order for a like period of 10 days is necessary pending the determination of the plaintiff's motion and prayer for a preliminary injunction;

IT IS ORDERED that the temporary restraining order issued in this cause on the 18th day of November 1946 be, and it hereby is, extended to 3 o'clock p. m. on the 7th day of December 1946, at which time it shall expire.

/s/ T. ALAN GOLDSBOROUGH,
Justice.

Signed at 2:45 p. m., November 27, 1946.

1

In the District Court of the United States
for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 29, 1946. Charles E. Stewart, Clerk.

Answer of the defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, to motion for preliminary injunction

Come now the defendants, United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America, and for answer to the motion for Preliminary Injunction filed against them and each of them by the plaintiff, herein say:

1

This Court is without jurisdiction to grant said Preliminary Injunction as prayed.

2

This Court is without jurisdiction to grant said Preliminary Injunction as prayed in that this case involves and grows out of a
2 labor dispute. Under the provisions of the Norris-LaGuardia Act (47 Stat. 70) and the provisions of Section 20 of the Clayton Act (38 U. S. Stat. C. 323, 730) this Honorable Court is without jurisdiction over the subject matter of this cause.

3

Equity acts only where there is no plain, adequate, and complete remedy at law. The allegations of the Petition for a Preliminary Injunction purport to show a violation of the War Labor Disputes

Act—a serious offense—in which field there is no place for equity intervention.

4

The Court is without power to issue a Preliminary Injunction in that such injunction would contravene the First, Fifth, and Thirteenth Amendments to the Constitution of the United States.

5

The sole function of a Preliminary Injunction is to preserve a status existing at the time of the institution of the suit to which it is ancillary. The Preliminary Injunction sought upon plaintiff's motion undertakes to alter and change such status instead of preserving the same.

6

This Honorable Court is without jurisdiction to grant a Preliminary Injunction because no injury to a private or property interest is shown.

3

7

Breach of contract sounds in damages. Resort to equity can only be had where the contract is crystal clear and then only for the purpose of specific performance. The institution of this suit for declaratory judgment is an admission of plaintiff that a dispute exists, and therefore a court of equity will not intervene.

8

And for other reasons which will appear upon the argument of this motion.

Whereupon, Defendants and each of them respectfully pray that the Motion for a Preliminary Injunction be denied.

/s/ Welly K. Hopkins
WELLY K. HOPKINS,
900 15th St. N. W.

/s/ Edmund Burke
EDMUND BURKE,

/s/ T. C. Townsend
T. C. TOWNSEND,

/s/ Harrison Combs
HARRISON COMBS,
900 15th St. N. W.

Counsel for:

UNITED MINE WORKERS OF AMERICA,
JOHN L. LEWIS, *Individually*,
JOHN L. LEWIS,
President, United Mine Workers of America.

Of Counsel:

/s/ Jos. A. Padway
JOSEPH A. PADWAY,

/s/ Henry Kaiser
HENRY KAISER,

/s/ James A. Glenn
JAMES A. GLENN.

In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 29, 1946. Charles E. Stewart, Clerk.

Notice of attachment of statement of points and authorities in support of defendants' answer to motion for preliminary injunction

Attached hereto in support of Answer to Motion for Preliminary Injunction is a memorandum of points and authorities.

/s/ Welly K. Hopkins
WELLY K. HOPKINS,
900 15th St. N. W.

/s/ Edmund Burke
EDMUND BURKE,

/s/ T. C. Townsend
T. C. TOWNSEND,

/s/ Harrison Combs
HARRISON COMBS,
900 15th St. N. W.

Counsel for:

UNITED MINE WORKERS OF AMERICA,
JOHN L. LEWIS, *Individually*,
JOHN L. LEWIS, *President*,
United Mine Workers of America.

1 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed November 29, 1946. Charles E. Stewart, Clerk.

Points and authorities in support of defendants' answer to motion for preliminary injunction

1

This Court is without jurisdiction to grant said Preliminary Injunction as prayed.

2

This Court is without jurisdiction to grant said Preliminary Injunction as prayed in that this case involves and grows out of a labor dispute.

The following authorities are offered in support of the two foregoing propositions:

Norris-LaGuardia Act (47 Stat. 70). (*Obergfell* v. *Green*, 121 Fed. 2d 46; *United States* v. *American Federation of Musicians*, 318 U. S. 741; *United States* v. *Weirton Steel Co.*, 7 Fed. Supp. 255; *Milk Wagon Drivers Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91; *Lauf* v. *Shinner*, 303 U. S. 325; *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U. S. 552; *United States* v. *Hutchinson*, 312 U. S. 219) Accordingly, the court is without jurisdiction over the subject matter and its temporary restraining order may be disregarded without liability to process for contempt. (*Ex parte Rowland*, 104 U. S. 604, 26 L. Ed. 861; *Ex parte Fisk*, 5 S. Ct. 724, 726, 113 U. S. 713, 28 L. Ed. 1117; *in re Sawyer*, 8 S. Ct. 482, 493, 124 U. S. 200, 31 L. Ed. 402.)

2

3

Equity acts only where there is no plain, adequate and complete remedy at law. (Chapter 144, 57 Stat. 163; U. S. C., Title 50, Secs. 1501–11, the War Labor Disputes Act.)

4

The Court is without power to issue a Preliminary Injunction in that such injunction would contravene the First, Fifth, and Thirteenth Amendments to the Constitution of the United States. (*Gompers* v. *Buckstove and Range Company*, 221 U. S. 418; *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; *Hague* v. *C. I. O.*, 307 U. S. 496; *American Federation of Labor* v. *Swing*, 312 U. S. 321; *Patterson* v. *Colorado*, 205 U. S. 454; *Stapleton* v. *Mitchell*, 60 F. Supp. 61; *Carpenters' Union* v. *Citizens' Committee*, 333 Ill. 225; *Bailey* v. *Alabama*, 219 U. S. 219; *Alabama State Federation of Labor* v. *McAdory*, 246 Ala. 1; *Henderson* v. *Coleman*, 7 Sou. 2d. 117; *Snyder* v. *Milwaukee*, 308 U. S. 147; *Republic Aviation Corp.* v. *National Labor Relations Board*, 65 S. Ct. 982, p. 987 Footnote.)

3

5

The sole function of a Preliminary Injunction is to preserve a status existing at the time of the institution of the suit to which it is ancillary. (Petition for Rule against defendants to Show Cause. Affidavit of Captain Collisson in support of said petition and rule granted by the Court.)

6

This Honorable Court is without jurisdiction to grant a Preliminary Injunction because no injury to a private or property interest is shown. Jurisdiction in equity is predicated upon property rights. There is no property right here, either private or otherwise, which equity can or should undertake to protect. (*Gompers* v. *Buckstove and Range Company*, 221 U. S. 418; In re *Debs* 158 U. S. 564.)

7

Breach of contract sounds in damages. See points and authorities herein which are adopted in support of the foregoing proposition.

In the District Court of the United States for the District of Columbia

Civil Action No. 37764.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Nov. 29, 1946. Charles E. Stewart, Clerk.

Order overruling motion to discharge and vacate rule to show cause

Upon consideration of the Motion of the Defendants To Discharge and Vacate The Rule To Show Cause, filed in the above entitled cause, it is, after argument by counsel for the respective parties hereto, this 29th day of November 1946,

ORDERED, That the said Motion be and the same is overruled.

BY THE COURT:

/s/ T. ALAN GOLDSBOROUGH,
Justice.

SEEN:

/s/ JOHN F. SONNETT,
Attorney for the Plaintiff.

/s/ WELLY K. HOPKINS,
Attorney for the Defendants.

1 In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 3, 1946. Charles E. Stewart, Clerk.

Findings of fact

Upon consideration of the entire record, the briefs, and arguments of counsel, the Court finds that it has been established beyond a reasonable doubt that:

1. On May 21, 1946, after investigation, the President of the United States found and proclaimed that there were interruptions or threatened interruptions in the operation of the mines producing bituminous coal as the result of existing and threatened strikes or other labor

disturbances; that the coal produced by such mines was required for the war effort and was indispensable for the operation of the national economy during the transition of war to peace; that the war effort would be unduly impeded or delayed by such interruptions; and that the exercise, by the President, of the powers vested in him by the Constitution and Laws of the United States was necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the then existing emergency.

2 2. On May 21, 1946, the President of the United States, by virtue of the authority vested in him by the Constitution and laws of the United States, issued Executive Order 9728, whereby he authorized and directed the Secretary of the Interior to take possession of any and all bituminous coal mines the operations of which were then interrupted or threatened with interruption because of work stoppages, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

3. Pursuant to the provisions of said Executive Order 9728, the United States, through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of most of the bituminous coal mines of the nation. Since that time, the United States, through the Secretary of the Interior, has been and now remains in possession of such coal mines.

3 4. As a consequence of negotiations authorized by the said Executive Order 9728, the Secretary of the Interior, as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C., with the defendant John L. Lewis, as President of the defendant Union (which agreement is hereinafter sometimes referred to as the Krug-Lewis Agreement).

5. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and Section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States on May 31, 1946.

4 6. The Krug-Lewis agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

7. The defendant Lewis, on October 21, 1946, sent a letter to the Secretary of the Interior in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis agreement and that under that section, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other, a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the National Bituminous coal industry.

5 8. In reply thereto, on October 22, 1946, N. H. Collisson, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, sent a letter to the defendant Lewis in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provisions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration."

9. On the same day, the defendant Lewis sent a further letter to the Secretary of the Interior in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement.

10. On October 27, 1946, the Secretary of the Interior sent a telegram to the defendant Lewis requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis.

6 12. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secretary of the Interior, advised the Secretary of the Interior as follows:

"I esteem your telegram 27th, received by me today, as compliance with request for official conference contained by letter 21 October. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, 1 November. Under these conditions Krug-

Lewis Agreement remains effective and unchanged during period of negotiation."

13. On November 1, 1946, a conference was held in Washington, D. C., attended by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter continued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the right claimed by the defendants to terminate the Krug-Lewis agreement by unilateral notice. During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a substantial and far-reaching nature and which would involve an increase in the cost of production of coal at the mines of at least fifty cents a ton.

7 14. Thereafter, on November 15, 1946, the defendant Lewis sent a letter to the Secretary of the Interior stating that "Fifteen days having now elapsed since the beginning of the above conference, the United Mine Workers of America, exercising its option, hereby terminate said Krug-Lewis agreement as of 12:00 o'clock p. m., midnight, Wednesday, November 20, 1946."

15. On the same day the Secretary of the Interior advised the defendant Lewis, by letter, "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment.'"

16. It has been for some years, and is now, as the defendants at all times, well knew, the well-established policy of the defendant Union, consistently adhered to by its members, that the miners will not work in the absence of a contract, and that upon the declaration by the defendants that no contract exists, the miners cease work. No other stoppage order ever goes out. Such a declaration of "no contract" is in fact a call to strike.

8 17. The defendants sent out and distributed to the membership of the defendant Union a notice dated November 15, 1946, which read as follows:

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS, *President* Metropolitan 0530

[SEAL]

United Mine Workers' Building
WASHINGTON 5, D. C.

NOVEMBER 15, 1946.

TO THE MEMBERSHIP OF THE UNITED MINE WORKERS OF AMERICA:

Greetings:

The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"NOVEMBER 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior, Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By: JOHN L. LEWIS, *President.*"

The foregoing is for your official information.

Sincerely yours,

/s/ JOHN L. LEWIS,
President.

9 This notice was a cease work or strike notice.

18. The letters of November 15, 1946, from the defendants to the Secretary of the Interior, purporting to terminate the Krug-Lewis agreement as of November 20, 1946, was released by the defendants to, and published by, the public press on or about November 15 and 16, 1946.

19. Thereafter, on November 18, 1946, the United States Attorney General of the United States, brought a suit against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, under the Federal Declaratory Judgment Act (28 U. S. C. Sec. 400) to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree, an order for temporary injunctive relief, and such further relief as might be necessary or proper.

20. Upon the filing of the verified complaint, and upon plaintiff's application, this Court, on November 18, 1946, issued a temporary restraining order against the defendants, based upon the facts alleged

in the complaint and upon affidavits filed in support of the application for the restraining order. The restraining order directed:

"* * * that the defendants and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing or encouraging the mine workers at the bituminous
10 coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow-down, walk-out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court."

The restraining order by its terms provided that it would expire at 3:00 o'clock p. m. on November 27, 1946, unless extended. Plaintiff's motion for a preliminary injunction was set down for hearing on November 27, 1946, at 10:00 o'clock a. m.

21. The defendants, and each of them, were duly and properly served at 2:15 p. m. on November 18, 1946, with a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits.

22. Following the service upon them of the Court's temporary restraining order, the defendants, as hereinafter more fully appears, have taken no action designed to withdraw the notice of alleged termination dated November 15, 1946, but, on the contrary, have wilfully, wrongfully, and deliberately permitted said notice to continue in effect. The defendants, and each of them, knew that, in accordance with their own established policy, if the notice of alleged termination were not withdrawn and were permitted to continue in effect, a work stoppage at the mines would occur at midnight November 20, 1946. As a result of the foregoing, on or about November 18, 1946, there commenced at said coal mines a gradual walk-out, strike, cessation of, and refusal to work by the members of defendant Union, which increased
11 daily until 12 o'clock midnight of November 20, 1946. Since that hour and at all times thereafter there has been a walk-out, strike, cessation of, and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government.

23. On November 21, 1946, the United States, by its Attorney General, filed a petition, supported by affidavits, for a rule to show cause

why the defendants should not be punished as and for a contempt of this Court, alleging that the defendants, in defiance of the terms of said temporary restraining order, had wilfully, wrongfully, and deliberately disobeyed said order.

24. On said petition and affidavit, the Court on the same day issued a rule to show cause ordering said defendants to appear before this court on November 25, 1946, to show cause why they should not be punished as and for contempt of this court. It was further ordered that if upon the return of said defendants it should be found that the alleged contempt was not sufficiently purged, a trial should be held on November 27, 1946, and the defendants should, unless waived by them, be tried upon the charges of contempt by this court with an advisory jury to be empaneled by the court.

25. On the return day, the defendants, being represented by counsel, and with the defendant John L. Lewis personally present in court, made an oral return to the rule to show cause as follows:

"The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting it to continue in effect.

12 "The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

"The defendants and each of them, Your Honor, therefore respectfully say to this Court that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

"The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

"The defendants will be prepared to present arguments on this question on November 27, the time fixed by the Court in its order, as we understand it, for the hearing of this case."

26. Thereupon, the court, finding that a contempt had been alleged and that the alleged contempt had not been sufficiently purged by the defendants' return, ordered that the matter be set down for trial on November 27, 1946.

27. On November 26, 1946, defendants filed and served upon plaintiff a motion to discharge and vacate the rule to show cause in which they asserted that the court was without jurisdiction over the subject matter of the cause; that equity will not enjoin the commission of a crime; that this was a proceeding for a criminal contempt, the defendants suggesting that it was based wholly on hearsay, information, and belief and should have been presented as an independent proceeding; and, finally, that the restraining order was void because it contravened the First, Fifth, and Thirteenth Amendments to the Constitution of the United States.

28. On November 27, 1946, and again on November 29, 1946, with the defendant Lewis personally in court on both days and both the defendant Union and the defendant Lewis represented by counsel, arguments were presented in support of and in opposition to the motion to discharge and vacate the rule to show cause.

13

29. On November 27, 1946, before the expiration date of the temporary restraining order issued on November 18, 1946, the court, on plaintiff's application and for good cause shown, over objection of defendants extended said temporary restraining order for a like period of ten days.

30. On November 29, 1946, this court denied defendants' motion to discharge and vacate the rule to show cause and set forth its reasons therefor in an opinion which appears in the record. Thereupon the defendants entered pleas of not guilty, waived their rights, if any, to an advisory jury, and the case proceeded to trial before the court.

31. The defendants were, before the trial, apprised of the fact that they were charged with both a civil and a criminal contempt; were subsequently advised in advance of the names and identities of witnesses to be called by the plaintiff; and were, by their own admission in open court, liberally informed as to all relevant information and were given every opportunity to meet the contentions of the plaintiff.

32. A full and complete hearing extending over a period of four days was had, at which the parties were given full opportunity to present evidence, to cross-examine witnesses, to present argument, and to avail themselves of any and all rights to which they might be entitled.

33. Throughout all hearings on this matter, commencing with the hearing on November 25, 1946, defendant John L. Lewis was personally present before this court.

14 34. The defendants, and each of them

(a) have at all times since 2:15 p. m. on November 18, 1946, permitted to continue in effect the notice of alleged termination given by the defendant John L. Lewis to the Secretary of Interior on November 15, 1946;

(b) have instigated, induced and encouraged the workers at said mines to interfere, by strike, slow-down, walk-out and cessation of work, with the operation of said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement;

(c) have completed the calling of a strike and have completed the instigation, inducement, and encouragement of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walk-out and cessation of work, with the operation of said mines, by permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement;

(d) have instigated, induced and encouraged the workers at said mines to interfere by strike, slow-down, walk-out, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and under the War Labor Disputes Act, and with the performance of other governmental functions, by failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant union employed at said mines that said notice of November 15, 1946, was withdrawn, and by failing to notify said members of defendant Union that there is

in force and in effect an agreement or contract between the defendant Union and the United States of America; that is, the so-called Krug-Lewis Agreement; and

(e) have interfered with this court's jurisdiction and have impaired and obstructed the determination of this case by the court.

35. As of November 20, 1946, there were approximately 76,000,000 tons of bituminous coal on hand and if the current work stoppage continues production would then be at the rate of about 658,000 tons a week, or about 5.3 percent of the normal production of about 12,500,000 tons a week. Normal requirements of bituminous coal during a three months' period beginning December 2, 1946, would be at the rate of approximately 54,000,000 tons a month, and if all available coal could be treated as a pool, although such ideal distribution cannot as a practical matter be obtained, to be used for an assumed normal consumption the supply on hand on November 20, 1946, would last about 37 days.

36. The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal; over 50 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric power is derived from bituminous coal. Over 80 percent of Class 1 railroads, over 60 percent of public utilities and steel-producing industries would have to shut down completely within sixty days if the current coal stoppage continues for that length of time.

37. If the current work stoppage were to continue for a sixty-day period there would be a decline in total employment of at least 5,000,000 full-time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a fraction of which has been estimated at one billion to one and one-quarter billion dollars during that period. A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000.

38. The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States and to the industry and economy of the United States.

39. The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace.

CONCLUSIONS OF LAW

1. The United States in seizing the mines pursuant to Executive Order 9728 and in operating them following such seizure was at all

times exercising its sovereign functions derived from the Constitution and laws of the United States.

2. The defendants, and each of them, have obstructed and interfered with the exercise by the United States of its sovereign functions.

3. The defendants, and each of them, have unlawfully coerced, instigated, induced, and encouraged the mine workers at the bituminous coal mines in the Government's possession to interfere by strike, slowdown, walk-out, cessation of work, or otherwise, with the operation of coal mines.

17 4. By reason of the facts found in paragraphs numbered 34 (a) through 34 (e), above, the defendants, and each of them, have at all times since the service upon them on November 18, 1946, of the temporary restraining order of this Court, wilfully, wrongfully and deliberately disobeyed and violated the terms of the said temporary restraining order, and have obstructed and interfered with the determination of this case by the Court.

5. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

6. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, been guilty, and is now guilty of a criminal contempt of this Court.

7. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

8. The defendant John L. Lewis at all times since the service upon him on November 18, 1945, of the temporary restraining order, has, beyond a reasonable doubt, been guilty and is now guilty of a criminal contempt of this Court.

T. ALAN GOLDSBOROUGH /s/.

DECEMBER 3, 1946.

21 In the District Court of the United States for the District of Columbia

Civil Action No. 37,764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THD UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 4, 1946, Charles E. Stewart, Clerk.

Notice of renewed application

SIRS: PLEASE TAKE NOTICE that at the conclusion of the proceedings in relation to this cause now pending before the Court and which have been continued to December 4, 1946, at ten o'clock in the forenoon of that day, the undersigned will renew plaintiff's application for a preliminary injunction, the said application having been heretofore set down for a hearing on November 27, 1946, in and by the order made

and entered by the Court on November 18, 1946, and upon said renewed application the undersigned will rely upon the verified complaint herein, the affidavits submitted in support of plaintiff's application for a temporary restraining order and the entire record of the aforesaid proceedings including all the evidence taken therein and the findings of fact and conclusions of law made and entered therein on December 3, 1946.

2 AND PLEASE TAKE FURTHER NOTICE that at the hearing on said application for a preliminary injunction the undersigned will submit to the Court a proposed preliminary injunction in the form hereto annexed.

TOM C. CLARK,
Attorney General.
By: John F. Sonnett
JOHN F. SONNETT,
Assistant Attorney General,
Attorneys for Plaintiff.

December 3, 1946.
(Date)

To: Welly K. Hopkins, Esquire,
Edmund Burke, Esquire,
T. C. Townsend, Esquire,
Harrison Combs, Esquire,
900 15th Street NW., Washington, D. C., Attorneys for Defendants.

In the District Court of the United States for the District of Columbia

No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY, AND AS PRESIDENT OF UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 5, 1946, Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

Herman Reddick, being duly sworn, deposes and says:

I am over the age of twenty-one years, and an employee of the Department of Justice.

On December 3, 1946, at about 6:00 p. m. I served the plaintiff's notice of renewed application for preliminary injunction with a proposed form of preliminary injunction on defendants' attorneys at 900 15th Street, N. W., Washington, D. C., by delivering a true copy thereof to a competent person in charge at their office at said address, said attorneys then being absent. I delivered said copy in a sealed envelope addressed to said attorneys as follows: Welly K. Hopkins, Edmund

Burke, T. C. Townsend, Harrison Combs, 900 15th Street, N. W., Washington, D. C.

/s/ Herman Reddick
HERMAN REDDICK.

Sworn to before me this 5th day of December 1946.

/s/ MARY M. REPETTI,
In & for Wash., D. C.
My Commission expires 12-1-49.

In the District Court of the United States
for the District of Columbia

No. 37764

UNITED STATES OF AMERICA

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF UNITED MINE WORKERS OF AMERICA

Filed Dec. 4, 1946. Charles E. Stewart, Clerk.

Judgment and sentence

This cause came on to be heard on the petition of the United States of America for a rule to show cause as to why the defendants should not be punished as and for contempts of this Court, and on the rule which issued, and the defendants having pleaded not guilty, and the Court being fully advised in the premises, and a full and complete trial having been held, and the Court having found beyond a reasonable doubt that the defendant John L. Lewis has committed a civil contempt and has committed and is guilty of a criminal contempt, and having made and signed findings of fact and conclusions of law, it is, by the Court, this 4th day of December 1946,

ADJUDGED, ORDERED, and DECREED:

That the defendant, John L. Lewis, be, and he hereby is, ordered to pay a fine of $10,000.00.

T. ALAN GOLDSBOROUGH,
Justice.

In the District Court of the United States for the District of Columbia

No. 37764

UNITED STATES OF AMERICA

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

Filed Dec. 4, 1946. Charles E. Stewart, Clerk.

Judgment and sentence

This cause came on to be heard on the petition of the United States of America for a rule to show cause as to why the defendants should not be punished as and for contempts of this Court, and on the rule which issued, and the defendants having pleaded not guilty, and the Court being fully advised in the premises, and a full and complete trial having been held, and the Court having found beyond a reasonable doubt that the defendant, United Mine Workers of America, has committed a civil contempt and has committed and is guilty of a criminal contempt, and having made and signed findings of fact and conclusions of law, it is, by the Court this 4th day of December 1946,

ADJUDGED, ORDERED, AND DECREED:

That the defendant, United Mine Workers of America, be, and it hereby is, ordered to pay a fine in the sum of $3,500,000.00.

T. ALAN GOLDSBOROUGH,
Justice.

1 In the District Court of the United States for the District of Columbia

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 4, 1946, Charles E. Stewart, Clerk.

Preliminary injunction

This cause having come on for hearing on the motion of the plaintiff for a preliminary injunction as prayed for in its complaint, and pursuant to the order of the Court entered November 18, 1946, and plaintiff having moved the Court that all evidence submitted in the proceedings had in connection with this cause be taken and considered as evidence for the purposes of plaintiff's motion for preliminary injunction, and having heard and considered all the testimony submitted herein, and having considered the verified complaint, defendants' answer to the motion for preliminary injunction, together with the affidavits submitted in support of the temporary restraining order the entire record, proceedings, briefs, and argument of counsel, the Court finds:

1. On May 21, 1946, after investigation, the President of the United States found and proclaimed that there were interruptions or threatened interruptions in the operation of the mines producing bituminous coal as the result of existing and threatened strikes or other labor disturbances; that the coal produced by such mines was required for the war effort and was indispensable for the operation of the national economy during the transition of war to peace; that the war effort would be unduly impeded or delayed by such interruptions; and that

the exercise, by the President, of the powers vested in him by the Constitution and Laws of the United States was necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the then existing emergency.

2 2. On May 21, 1946, the President of the United States, by virtue of the authority vested in him by the Constitution and laws of the United States, issued Executive Order 9728, whereby he authorized and directed the Secretary of the Interior to take possession of any and all bituminous coal mines the operations of which were then interrupted or threatened with interruption because of work stoppages, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

3. Pursuant to the provisions of said Executive Order 9728, the United States, through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of most of the bituminous coal mines of the nation. Since that time the United States, through the Secretary of the Interior, has been and now remains in possession of such coal mines.

3 4. As a consequence of negotiations authorized by the said Executive Order 9728, the Secretary of the Interior, as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C. with the defendant John L. Lewis, as President of the defendant Union (which agreement is hereinafter sometimes referred to as the Krug-Lewis Agreement).

5. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and Section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States on May

4 31, 1946.

6. The Krug-Lewis Agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

7. The defendant Lewis, on October 21, 1946, sent a letter to the Secretary of the Interior in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis Agreement

and that under that section, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities, and all other pertinent matters affecting or appertaining to the National Bituminous coal industry.

5 8. In reply thereto, on October 22, 1946, N. H. Collisson, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, sent a letter to the defendant Lewis in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provisions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration."

9. On the same day the defendant Lewis sent a further letter to the Secretary of the Interior in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement.

10. On October 27, 1946, the Secretary of the Interior sent a telegram to the defendant Lewis requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis.

6 11. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secretary of the Interior, advised the Secretary of the Interior as follows:

"I esteem your telegram 27th, received by me today, as compliance with request for official conference contained in letter 21 October. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, 1 November. Under these conditions Krug-Lewis agreement remains effective and unchanged during period of negotiation."

12. On November 1, 1946, a conference was held in Washington, D. C., attended by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter con-

tinued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the right claimed by the defendants to terminate the Krug-Lewis agreement by unilateral notice. During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advance specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a substantial and far-reaching nature and which would involve an increase in the cost of production of coal at the mines of at least fifty cents a ton.

7 13. Thereafter, on November 15, 1946, the defendant Lewis sent a letter to the Secretary of the Interior stating that "Fifteen days having now elapsed since the beginning of the above conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis agreement as of 12:00 o'clock p. m. midnight Wednesday, November 20, 1946."

14. On the same day the Secretary of the Interior advised the defendant Lewis, by letter, "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government Possession the terms and conditions of employment.'"

15. It has been for some years, and is now, as the defendants at all times well knew, the well-established policy of the defendant Union, consistently adhered to by its members, that the miners will not work in the absence of a contract, and that upon the declaration by the defendants that no contract exists, the miners cease work. No other stoppage order ever goes out. Such a declaration of "no contract" is in fact a call to strike.

8 16. The defendants sent out and distributed to the membership of the defendant Union a notice dated November 15, 1946, which read as follows:

UNITED MINE WORKERS OF AMERICA

John L. Lewis,
President

Metropolitan
0530

[SEAL]

United Mine Workers' Building,
Washington 5, D. C.

November 15, 1946.

TO THE MEMBERS OF THE UNITED MINE WORKERS OF AMERICA:

Greetings: The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"November 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior, Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference

of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, President."

The foregoing is for your official information.

Sincerely yours,

/s/ JOHN L. LEWIS,
President.

9 This notice was a cease work or strike notice.

17. The letter of November 15, 1946, from the defendants to the Secretary of the Interior, purporting to terminate the Krug-Lewis agreement as of November 20, 1946, was released by the defendants to, and published by, the public press on or about November 15 and 16, 1946.

18. Thereafter, on November 18, 1946, the United States of America by the Attorney General of the United States, brought a suit against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, under the Federal Declaratory Judgment Act (28 U. S. C., Sec. 400) to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree, an order for temporary injunctive relief, and such further relief as might be necessary or proper.

19. Upon the filing of the verified complaint, and upon plaintiff's application, this Court, on November 18, 1946, issued a temporary restraining order against the defendants, based upon the facts alleged in the complaint and upon affidavit filed in support of the application for the restraining order. The restraining order directed:

"* * * that the defendants and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing or encouraging the mine workers at the bituminous
10 coal mines in the Government's possession, or any of them, or any person to interfere by strike, slow-down, walk-out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which

would impair, obstruct, or render fruitless the determination of this case by the Court."

The restraining order by its terms provided that it would expire at 3:00 o'clock p. m. on November 27, 1946, unless extended. Plaintiff's motion for a preliminary injunction was set down for hearing on November 27, 1946, at 10:00 o'clock a. m.

20. The defendants, and each of them, were duly and properly served at 2:15 p. m. on November 18, 1946, with a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits.

21. Following the service upon them of the Court's temporary restraining order, the defendants, as hereinafter more fully appears, have taken no action designed to withdraw the notice of alleged termination dated November 15, 1946, but, on the contrary, have willfully, wrongfully, and deliberately permitted said notice to continue in effect. The defendants, and each of them, know that, in accordance with their own established policy, if the notice of alleged termination were not withdrawn and were permitted to continue in effect, a work stoppage at the mines would occur at midnight November 20, 1946. As a result of the foregoing, on or about November 18, 1946, there commenced at said coal mines a gradual walkout, strike, cessation of and refusal to work by the members of defendant Union, which
11 increased daily until 12 o'clock midnight of November 20, 1946. Since that hour and at all times thereafter there has been a walkout, strike, cessation of and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government.

22. On November 27, 1946, before the expiration date of the temporary restraining order issued on November 18, 1946, the Court, on plaintiff's application and for good cause shown, over objection of defendants extended said temporary restraining order for a like period of ten days.

23. As of November 20, 1946, there were approximately 76,000,000 tons of bituminous coal on hand and if the current work stoppage continues production would then be at the rate of about 658,000 tons a week or about 5.3 percent of the normal production of about 12,500,000 tons a week. Normal requirements of bituminous coal during a three months' period beginning December 2, 1946, would be at the rate of approximately 54,000,000 tons a month and if all available coal could be treated as a pool, although such ideal distribution cannot as a practical matter be obtained, to be used for an assumed normal consumption the supply on hand on November 20, 1946, would last about 37 days.

24. The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal; over 50 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric

power is derived from bituminous coal. Over 80 percent of
12 Class 1 railroads, over 60 percent of public utilities and steel-producing industries, would have to shut down completely within sixty days if the current coal stoppage continues for that length of time.

25. If the current work stoppage were to continue for a sixty-day period, there would be a decline in total employment of at least 5,000,000 full-time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year, with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a fraction of which has been estimated at one billion to one and one-quarter billion dollars during that period. A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000.

26. The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States, and to the industry and economy of the United States.

27. The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace.

WHEREFORE, upon all of the prior proceedings and upon the foregoing considerations and findings, and it appearing that unless a preliminary injunction is granted herein the existing stoppage in bituminous coal production will cause great loss and irreparable damage to the United States; that such stoppage will directly interfere with governmental operations and sovereign functions; will adversely affect the public interest; and will seriously endanger the public welfare and safety; and it further appearing that the action of the defendants may deprive the Court of full and effective jurisdic-
13 tion over the claim set forth in the complaint and may impair, obstruct, or render fruitless the Court's determination of this action, the Court being sufficiently advised in the premises,

IT IS BY THE COURT, this 4th day of December 1946,

ORDERED that the defendants, their agents, servants, employees, and attorneys, and all persons in active concert or participation with them be and each of them are hereby enjoined, pending final determination of this cause, from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior, dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow-

down, walk-out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court.

IT IS FURTHER ORDERED that this preliminary injunction be and remain in full force and effect until final hearing of this cause and until further order of this Court.

/s/ T. ALAN GOLDSBOROUGH,
Justice.

In the District Court of the United States for the District of Columbia

No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY, AND AS PRESIDENT OF UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 5, 1946. Charles E. Stewart, Clerk.

CITY OF WASHINGTON,
District of Columbia, ss:

John Ford Baecher, being duly sworn, deposes and says:

I am over the age of twenty-one years, and an employee of the Department of Justice.

On the 4th day of December 1946, at or about 4:15 p. m. I served the preliminary injunction filed in the above-entitled case on December 4, 1946, on defendants' attorneys by delivering a true copy thereof to Joseph A. Padway, attorney for such defendants, at the District Court for the District of Columbia, 5th and E Streets NW., Washington, D. C.

/s/ John Ford Baecher
JOHN FORD BAECHER.

Sworn to before me this 5th day of December.

/s/ MARY M. REPETTI,
In and for Washington, D. C.

My Commission expires 12-1-49.

In the District Court of the United States
for the District of Columbia

UNITED STATES OF AMERICA, PLAINTIFF

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

Filed Dec. 4, 1946. Charles E. Stewart, Clerk.

Admission and acceptance of service of copies of preliminary injunction issued December 4, 1946

At 4:30 p. m. on December 4, 1946, in Justice Goldsborough's court room I received and accepted service on copies of preliminary injunction issued on December 4, 1946, by Justice T. Alan Goldsborough in the above-entitled case. I received and accepted service of copies of said injunction on behalf of The United Mine Workers of America, an unincorporated association, and on behalf of John L. Lewis, individually and as President of The United Mine Workers of America.

/s/ JOS. A. PADWAY,
Counsel for the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as President of the United Mine Workers of America.